

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEVEN SCHREIBER,	:	15-CV-6861 (CBA)
individually and	:	
derivatively on behalf of	:	
TWO RIVERS COFFEE, LLC,	:	
	:	United States Courthouse
Plaintiff,	:	Brooklyn, New York
	:	
-against-	:	
	:	Wednesday, August 3, 2016
	:	9:30 a.m.
EMIL FRIEDMAN, ET AL.,	:	
	:	
Defendants.	:	

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TRANSCRIPT OF CIVIL CAUSE FOR EVIDENTIARY HEARING
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

For the Plaintiffs:	JAY PHILIP NELKIN, ESQ. CAROL NELKIN, ESQ.
For the Defendants EMIL FRIEDMAN AND NEW YORK BEST COFFEE, INC.:	PAUL HANS SCHAFHAUSER, ESQ.
For the Defendants E&I INVESTORS GROUP, LLC, E&J FUNDING CO., LLC, E&J MANAGEMENT INC., E & JERYG MANAGEMENT CORP., LLC, 24 HOUR OIL DELIVERY CORP., MB FUEL TRANSPORT, MB FUEL TRANSPORT I, ASSOCIATED FUEL OIL CORP., LIGHT TRUCKING CORP.; 165 STREET REALTY CORP. AND PARK AVENUE ASSOCIATES:	DAVID B. GRANTZ, ESQ.

1 A P P E A R A N C E S (cont'd.):

2 For the Defendants RICHARD AVERY FINKEL, ESQ.
3 SYLVIA EZELL, SONIA RIVERA,
4 AND JORGE SALCEDO:

5 For the Defendants RICHARD BRUCE FELDMAN, ESQ.
6 MICHAEL DEVINE AND MICHAEL
DEVINE, CPA:

7 For the Defendants ANDREW W. GEFELL, ESQ.
8 GEOFFREY HERSKO AND GEOFFREY
9 S. HERSKO, P.C.:

10 For the Defendants MAURICE HELLER, ESQ.
11 SOLOMON BIRNBAUM, SINGLE
12 SERVE BEVERAGES DISTRIBUTION,
13 CRAZY CUPS, 26 FLAVORS, LLC,
OFFICE COFFEE SERVICES, LLC,
AND TWO RIVERS COFFEE, LLC:

14 Court Reporter: JOSHUA B. EDWARDS, RDR, CRR
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17 Proceedings recorded by mechanical stenography; transcript
18 produced by Computer-Assisted Transcription.
* * *

19 MR. SCHAFHAUSER: Your Honor, I wish to apologize
20 for being late.

21 THE COURT: All right.

22 MR. SCHAFHAUSER: I'm really sorry.

23 THE COURT: I understand. It happens. Leave
24 earlier next time. We will start on time in the future and
25 anyone who is late will read the transcript.

MR. SCHAFHAUSER: Yes. Thank you, Your Honor.

J. Salcedo - Direct/Mr. Nelkin

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1 THE COURT: And the witness?

2 MR. NELKIN: Mr. Salcedo.

3 THE COURT: Mr. Salcedo, are you here? Come on up,
4 please.

5 (The witness assumes the stand.)

6 THE COURT: Raise your right hand.

7 **JORGE SALCEDO**, called as a witness, having been first duly
8 sworn, was examined and testified as follows:

9 THE COURT: Have a seat, please.

10 Go ahead, sir.

11 DIRECT EXAMINATION

12 BY MR. NELKIN:

13 Q Please state your full name.

14 A I didn't hear.

15 Q I'm sorry. Please state your full name.

16 A Jorge with a "J" Salcedo.

17 Q Are you also known by "hor-hey" (ph)?

18 A Yeah, that is in Spanish.

19 Q Okay. And which one do you tend to --

20 A Makes no difference.

21 Q Where do you reside?

22 A In the Bronx.

23 Q What address?

24 A 1567 Paulding Avenue.

25 Q And do you own or rent that?

J. Salcedo - Direct/Mr. Nelkin

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1 A I own that.

2 Q Okay. And who did you buy it from?

3 A The Ahearns.

4 Q Okay. And do you know when you bought it?

5 A Twenty-five years ago, 30 years ago.

6 Q And how long have you known the Ahearns?

7 A Twenty-five years, 30 years.

8 Q Have you known them through a business relationship or
9 have you known them as friends?

10 A Both.

11 Q Okay. When did you first start working for the Ahearns?

12 A About 25 years ago.

13 Q And do you remember what company you started working for
14 them for?

15 A Could have been Associated Fuel. It's such a long time.

16 Q And do you know where that company was located?

17 A Well, I think it's in the Bronx, 141 East.

18 Q 165th Street?

19 A Yeah.

20 Q Are you employed now?

21 A Yes.

22 Q And who is your employer?

23 A N&S, N&S Fuel.

24 Q N and S?

25 A Yeah.

J. Salcedo - Direct/Mr. Nelkin

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1 Q Okay. And who owns that company?

2 A According to my understanding is, his name is Max, and
3 then Nick.

4 Q What are their last names?

5 A I don't know their last name. Nick I know is Ahearn.

6 Q Nick is an Ahearn?

7 A Yes, last name is Ahearn.

8 Q Okay. But you don't know Max's last name?

9 A No.

10 Q And where is that business located?

11 A Hawthorne.

12 Q Hawthorne?

13 A Yeah.

14 Q And do you work in Hawthorne?

15 A No. They call me, give me work through my phone.

16 Q Through your phone?

17 A Right.

18 Q Okay. What type of phone is that?

19 A Samsung phone.

20 Q And where do you actually go? Do you go to a particular
21 job site?

22 A Yes.

23 Q And where is that?

24 A Anywhere they send me, all over the place.

25 Q And if there's no place that they are sending you, do you

J. Salcedo - Direct/Mr. Nelkin

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1 have an office?

2 A I stay home.

3 Q You stay home? So you are either at home or you are
4 going to some site?

5 A Right.

6 Q Can you tell me what your job description is.

7 A Plumbing and heating.

8 Q But what, in particular, do you do?

9 A I do a little of everything. I do electric work. I do
10 any repairs.

11 Q Are you a mechanic?

12 A No. I'm an all-around guy.

13 Q Well, are you working on machinery?

14 A Working on boilers, water leaks, water pumps.

15 Q And repairing them?

16 A Right.

17 Q And do you order parts?

18 A When I need them.

19 Q Okay. And are you licensed?

20 A No.

21 Q If you have to do work on a boiler, does that require a
22 license?

23 A It depends the work you are doing.

24 Q What type of work would require a license and what type
25 wouldn't require a license?

J. Salcedo - Direct/Mr. Nelkin

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1 A Well, an inspection from the City, an environmental
2 inspection, DP inspection, you need a license.

3 Q What about installing a boiler?

4 MR. FINKEL: Objection, Your Honor.

5 THE COURT: Overruled. If I say "overruled," that
6 means you can answer.

7 THE WITNESS: Oh.

8 A Yeah, you need a license to install a boiler, definitely.

9 Q Okay. Did you ever install a boiler for Two Rivers?

10 A No.

11 Q Now, how long have you worked for N&S?

12 A Maybe four months I have working with them.

13 Q Who did you work for before that?

14 A Two Rivers.

15 Q You worked for Two Rivers up until four months ago?

16 A No. I was out of work about for two months, three
17 months, then I worked for Two Rivers -- for N&S.

18 Q Well, this is now --

19 A I'm bad with timing, dates and time. Hang me if you want
20 me to, but I'm very bad with it.

21 Q Okay. What's the last event that you remember doing at
22 Two Rivers?

23 A The last event? About 7:00 in the morning I was working
24 on a machine getting it ready for the day. And that was my
25 last event that I did.

J. Salcedo - Direct/Mr. Nelkin

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1 Q Did you ever help Ms. Rivera remove anything from Two
2 Rivers?

3 A Yes.

4 Q Okay. Did you do that before or after the last event you
5 just described?

6 A After.

7 Q After?

8 A Yes.

9 Q Okay. Well, I'm confused because the last event would
10 then be removing the boxes or removing something from Two
11 Rivers, correct?

12 A Well, I helped remove from her office, from Two Rivers
13 back to the Bronx which Mr. Friedman instructed me to help her
14 do that.

15 Q Okay. Is that the last thing that you did at Two Rivers?

16 A No.

17 Q What did you do besides that?

18 A I went back to two reviewer about, I don't know, maybe
19 three weeks after that, four weeks after that and I, by
20 Mr. Friedman's instructions because we had that an oxygen tank
21 there.

22 THE COURT: You had a what?

23 THE WITNESS: An oxygen tank.

24 THE COURT: Yes.

25 A With a torch, torch set, which those were rented. So he

J. Salcedo - Direct/Mr. Nelkin

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1 asked me to go back, get the tanks and return them back from
2 where we got them from.

3 Q And did you do that?

4 A Yes, I did.

5 Q Do you know what company you returned them to?

6 A It's in South Plainfield. I don't remember the name,
7 Argo something.

8 Q And what time of day did you take those tanks?

9 A It was during the day, of course, but the date, I don't
10 remember the date exactly, but --

11 Q And how did you get into the --

12 A I called Javier Espinal to open the door and let me in
13 and he helped me with the tank, brought the tank out and
14 helped me load up the tank. It's a very heavy tank and that's
15 how I did that.

16 Q And were you working for Two Rivers at that time?

17 A No, sir.

18 Q What caused you to stop working for Two Rivers?

19 A Well, like I said, I was working on that machine. And
20 normally I opened up the place in the morning and get all the
21 lights on and everything on, the compressors on and so the
22 employees can come to work. I was working on the machinery in
23 the morning. I was working in the hallways. Mr. Schreiber,
24 Eugene, started screaming to me that my desk was numbers here.
25 I don't know what happened to him, why he was screaming at me.

J. Salcedo - Direct/Mr. Nelkin

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1 And I called Mr. Friedman. He told me pick up my stuff and go
2 back to the Bronx and I picked up my stuff, my tools and
3 whatever I had there and load up my truck and I left back to
4 the Bronx. That was the end of that.

5 Q And at that point, did you consider yourself to no longer
6 be working for Two Rivers?

7 A You could say that.

8 Q Okay. Could that have been around March of 2015?

9 A That's what you are telling me, it might be; I don't
10 know. Like I said, with dates, forget about it. You know, I
11 don't know what to tell you.

12 Q All right. And from the time you went back to the Bronx,
13 who were you -- well, who were you working for in the Bronx?

14 A Nobody. I didn't work for about two months.

15 Q So, well, honestly, it appears to be more like a year
16 something.

17 A Well, like I told you, dates and time, I'm the worst guy
18 in the world, man. Forgive me, but that's what it is.

19 Q Who do you live with?

20 A My wife and kids.

21 Q Okay. Does your wife work?

22 A Yes.

23 Q What does she do?

24 A She lives with me.

25 Q What?

J. Salcedo - Direct/Mr. Nelkin

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1 A What was your question again?

2 Q Does your wife work?

3 A Yes.

4 Q What does she do?

5 A She's a teacher assistant.

6 Q And do you remember how much money you were earning at
7 Two Rivers?

8 A Yeah, I was making, I think it was about \$900, in at that
9 area.

10 Q Nine hundred?

11 A A week.

12 Q Could it have been more like \$1,500 a week?

13 A I would have to look at the checks; I don't know.

14 Q We will get to the checks in a little bit.

15 THE COURT: I'm sorry; so you don't know what you
16 were making?

17 THE WITNESS: Well, I don't remember exactly. It's
18 about, you know, could be a thousand dollars. You know, I
19 don't --

20 THE COURT: But I just want to make sure, you can't
21 tell me with any kind of precision how much money you were
22 making?

23 THE WITNESS: I don't remember. This is why.

24 THE COURT: Got it.

25 Go ahead.

J. Salcedo - Direct/Mr. Nelkin

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1 BY MR. NELKIN:

2 Q How were you paid?

3 A By check.

4 Q And what did you do with those checks?

5 A Deposit them in my checking account.

6 Q How many checking accounts do you have?

7 A I have two.

8 Q Two?

9 A Right.

10 Q Customer give any of your checks to Mr. Friedman?

11 A I don't recall; I don't remember if I did or not.

12 Q You don't remember if it you ever gave a check to him and
13 he gave you cash back?

14 A No, I don't think so.

15 Q Do you ever remember if he gave you cash?

16 A No. I always got a check from Two Rivers.

17 Q What are your bank account numbers?

18 A I don't know my bank account numbers.

19 Q Would you be able to determine what your -- well, what's
20 your bank?

21 A I got Chase Bank and I have Citibank.

22 Q You have two separate banks?

23 A Yes.

24 Q Okay. And do you know if their account numbers start
25 with the same account number, the same numbers?

J. Salcedo - Direct/Mr. Nelkin

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1 A My wife takes care of that. I don't know.

2 Q Okay. Does your wife have any bank accounts?

3 A Probably, yeah.

4 Q Separate than yours?

5 A I think so, yeah.

6 Q Do you know what bank she would have them at?

7 A Chase.

8 Q So they are either at Chase or Citibank?

9 A I got Citibank and I have Chase. That's it.

10 Q And they are both checking accounts?

11 A Checking and savings.

12 Q Okay. And when did you open those accounts?

13 A A long time ago, a long, long time ago.

14 Q What branch?

15 A Citibank. What do you mean "what branch"?

16 Q Where is the bank located in?

17 A The Bronx.

18 Q What is the address?

19 A I don't know the address. One is in Istremia (ph), one
20 is in Willett Point Road.

21 Q And do you have an ATM card for them?

22 A Yeah.

23 Q And do you have it for both?

24 A Excuse me?

25 Q Do you have an ATM card for both bank accounts?

J. Salcedo - Direct/Mr. Nelkin

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1 A Yes.

2 Q Okay. And do they send you statements?

3 A Yes.

4 Q Okay. Do you have those statements?

5 A Not with me. My wife takes care of that.

6 Q But you haven't thrown them away?

7 A No. My wife takes care of that. I'm not -- I don't do
8 numbers well.

9 Q Okay. And those would be stored at your house?

10 A Probably, yeah.

11 Q Okay. Do you have any brokerage accounts?

12 A What's a brokerage account?

13 Q With, like, an investment account?

14 A Yes, I do.

15 Q Where is that?

16 A Chase.

17 Q Also at Chase?

18 A Mm-hmm.

19 Q Any other financial accounts?

20 MR. FINKEL: Objection, Your Honor.

21 THE COURT: Overruled.

22 A My mortgage with Citibank.

23 Q Did your salary ever change at Two Rivers?

24 A No.

25 Q So you always earned roughly 900 or --

J. Salcedo - Direct/Mr. Nelkin

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1 A A thousand dollars; I don't remember. You have the
2 numbers.

3 Q Well, I'm trying to find out what information you have.

4 A You are in trouble if it you want to find out. I'm
5 terrible.

6 Q Okay.

7 A I try my best, you know, so that's all I can do for you.

8 Q How do you receive information from N&S?

9 A They call me. They fax it sometimes to us or they text
10 me.

11 Q Text you? And the text would be to your phone?

12 A Right.

13 Q Okay. And the fax is at your house?

14 A Yes, it's a printer, all-in-one printer.

15 Q And what is it connected to?

16 A The phone line.

17 Q Okay. Did Mr. Friedman keep part of your salary?

18 A No.

19 Q Okay. Did you get a W-2 or 1099?

20 A I got a tax paper, sure.

21 Q Okay. And do you remember who gave that to you?

22 A Two Rivers.

23 Q Two Rivers? Do you remember who at Two Rivers gave it to
24 you?

25 A Excuse me?

J. Salcedo - Direct/Mr. Nelkin

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1 Q Who at Two Rivers gave it to you?

2 A Maybe Eugene; I don't know.

3 Q Do you remember when you started working for Two Rivers?

4 A I worked there about year and a half. That's all I know.

5 Q About --

6 A One year and a half, in that area.

7 Q Did you work for them in 2012, do you know?

8 A (No verbal response.)

9 Q Who did you work for before you came to Two Rivers?

10 A MB Fuel, MB.

11 Q And do you know the full name of that company?

12 A No, MB Fuel, that's all I know.

13 Q Okay. Is there more than one MB Fuel?

14 A I always know MB Fuel. That's it.

15 Q And what did you do at MB Fuel?

16 A Heating and plumbing, I'm all-around guy, you know.

17 Q And how long were you at MB Fuel?

18 A Since the company started, since the company -- since I
19 went back to Two Rivers, I think.

20 Q When you were at MB Fuel, did you ever do any work for
21 Two Rivers?

22 A Yes, I did.

23 Q Okay. What did you do?

24 A We helped construct Two Rivers, mechanically-wise.

25 Q Okay. And how were you paid for that work?

J. Salcedo - Direct/Mr. Nelkin

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1 A I was paid from MB Fuel by check.

2 Q Okay. And who do you understand MB Fuel was owned by?

3 A The Ahearns.

4 Q What about Mr. Friedman?

5 A (No verbal response.)

6 Q Who else worked at MB Fuel?

7 A Worked where, office, floor?

8 Q Just tell me everyone you know who worked at MB Fuel.

9 A Me, couple other mechanics. We had three or four
10 mechanics.

11 Q What were their names?

12 A Can't remember the name right now.

13 Q But there were three of them?

14 A Yeah, about three.

15 THE COURT: You don't remember the names of anybody
16 you worked with?

17 THE WITNESS: Not right now because I'm kind of
18 nervous, you see.

19 THE COURT: Why don't you take a moment. If you
20 need a break, calm down, that's fine. We can take a break. I
21 want you to be calm and relaxed enough so that if it somebody
22 asks you, you know, a question like tell me some of the people
23 you worked with, you are calm enough to be able to do that.
24 Would you like a break?

25 THE WITNESS: I don't know.

J. Salcedo - Direct/Mr. Nelkin

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1 THE COURT: Okay, but you can't remember the names?

2 THE WITNESS: Not right now.

3 THE COURT: Okay, go on, sir.

4 BY MR. NELKIN:

5 Q How long did you work there?

6 A Where?

7 Q At MB Fuel.

8 A A long time. I don't have dates exact.

9 Q More than five years?

10 A Probably.

11 Q More than ten years?

12 A (No verbal response.)

13 Q Okay. And how long did you work with those other
14 mechanics?

15 A A long time.

16 Q Were they there the whole time you were there?

17 A Most of them.

18 Q Okay. And who else do you work working at MB Fuel?

19 A Well, I don't know if they worked for MB Fuel, but they
20 are there in the building, you know, because there was Sonia,
21 Sylvia.

22 Q Okay. You say you don't know if they worked for them,
23 but they were there in the building?

24 A Yeah, in this the office, they were office people.

25 Q Tell me what you mean by "the office."

J. Salcedo - Direct/Mr. Nelkin

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1 A Work upstairs in the office.

2 Q Okay. Is there one office?

3 A No, there were several office, still more.

4 Q Was it one company's office?

5 A I don't know how the company worked. You know, I was
6 just an employee; I don't know.

7 Q Did you ever go up to that office?

8 A Yes.

9 Q Okay. And when you went up to the office, what were you
10 doing up there?

11 A Maybe changing a light fixture or changing the filter
12 from the air condition, that type of stuff.

13 Q Okay. And Ms. Rivera was up there?

14 A Yeah, yes.

15 Q You observed Ms. Rivera in that office?

16 A Right, yeah.

17 Q But you don't know who she worked for?

18 A Right, because there's several companies; I don't know.
19 I'm not -- I'm on the floor. I'm on the street.

20 Q What are the other companies?

21 A Well, right now there's H& A Pump there which is, you
22 know, work out of there. And there's Pronto Heating Supply
23 there.

24 Q When you say they "work out of there," do they have
25 separate units or storefronts?

J. Salcedo - Direct/Mr. Nelkin

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1 A I guess storefront, you could say.

2 Q Well, if I'm walking by the street, would I walk into an
3 H& A Pump store?

4 A Go to the door and they are in there.

5 Q And if, then if I was in their office, could I get up to
6 Sonia's office or would I have to go out from the street?

7 A No, you could walk from the building, different area to
8 go upstairs.

9 Q And is it locked or is H&A's space connected and open to
10 the main building?

11 A It's a separate space, you know, that's in the building.

12 Q Okay. It's a separate space?

13 A Mm-hmm.

14 Q What -- just describe their space. Tell me all the doors
15 to their space, to the H&A space.

16 A H&A, it's like, half of this place here with a door like
17 that in the front, a sliding door (indicating) and you go in.

18 Q Okay. I'm in their space --

19 THE COURT: Can you move on from H&A. Seems to be a
20 completely separate issue here.

21 MR. NELKIN: Well, I'm just trying to figure out if
22 it's a connected company or not.

23 Q What other units, companies are there?

24 A Pronto Heating.

25 Q Okay. And can you get through the Pronto office up to

J. Salcedo - Direct/Mr. Nelkin

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1 the other office?

2 A No.

3 Q But you can from H&A?

4 A Well, you see, there's one big building dividing
5 different things.

6 Q The MB space --

7 A Right.

8 Q -- is that a separate space?

9 A It's divided separate from the rest of the stuff,
10 different building.

11 Q So it's not connected to the others?

12 A Well, physically, it's one structure, but, you know.

13 Q Does -- do you know who owns H&A?

14 A Yeah.

15 Q Who?

16 A His name is Hector.

17 Q Does he have anything to do with the Ahearns?

18 A No.

19 Q Does he have anything to do with Mr. Friedman?

20 A No, that I know of.

21 Q What about Pronto?

22 A (No verbal response.)

23 Q Who else have you seen in the office at MB?

24 A Sylvia, Sonia. There's Cathy and there's another girl.

25 I can't remember her name.

J. Salcedo - Direct/Mr. Nelkin

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1 Q What about Jack Ahearn?

2 A I haven't seen Jack for a long time.

3 Q Any idea how long?

4 A I don't know.

5 Q Five years?

6 A It's possible. I know he's sick.

7 Q What about Laurence Ahearn?

8 A Yes.

9 Q Okay. Is he in that office?

10 A He's all over the building. That's Larry. You are
11 talking about Larry?

12 Q Well, Laurence Ahearn, do you know if Laurence Ahearn is
13 known as Larry?

14 A I know him by Larry, not by Laurence.

15 Q Okay. Is there -- is he in that space?

16 A Yes.

17 Q Does he have an office there?

18 A Yes.

19 Q What about Mr. Friedman?

20 A What about him?

21 Q Does he have an office there?

22 A Yes.

23 Q And you see him there? Is there anyone else who has
24 offices there?

25 A Yeah.

J. Salcedo - Direct/Mr. Nelkin

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1 Q Who?

2 A I think there's Bright Fuel, I think is the name of the
3 company, rents there, Bright Fuel, or no, hunts Point Fuel.

4 Q And does that have any connection with the Ahearns?

5 A No.

6 Q What about with Mr. Friedman?

7 A Not that I know of.

8 Q Do you know a Robert Janz?

9 A Yes.

10 Q Who is he?

11 A He used to be, according to my understanding -- don't
12 hold me on it -- he used to be a dispatcher there. That's
13 what I used to know.

14 Q Okay. And where is he now?

15 A I have no idea. I haven't been there for a while.

16 Q Okay. Do you know if he ever owned MB?

17 A I don't know anything about him.

18 Q Okay. How long was he a dispatcher that you --

19 A A long time, at least that's what I think that's what his
20 role was.

21 Q And that was for MB?

22 A I think so.

23 Q Okay. And so he worked for the Ahearns?

24 A I imagine.

25 Q You worked for the Ahearns when you were at MB?

J. Salcedo - Direct/Mr. Nelkin

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1 A Yes.

2 Q And did you get a check from MB?

3 A Yes.

4 Q And did you get checks from N&S?

5 A When I worked for MB, I used to get a check from MB. Now
6 I don't work for MB, so I don't get no checks. Now I work for
7 N&S, I get a check from N&S. I used to.

8 Q Besides Two Rivers, M&S and MB, are there any other
9 companies that you worked for?

10 A Associated Fuel.

11 Q Did you get a check for them?

12 A I used to when I used to work for them.

13 Q How long ago was it that you worked for them?

14 A A long time ago.

15 Q Are there any other companies besides those companies
16 that you worked for?

17 A Associated Fuel, MB Fuel, that I can remember.

18 Q And did you have roughly the same job responsibilities at
19 all of those companies?

20 A Yes.

21 Q Okay. Did you ever do any work for Mr. Friedman besides
22 through MB Fuel?

23 A No, I always worked through MB Fuel.

24 Q Did you ever work -- do any repairs on any buildings that
25 Mr. Friedman might have owned?

J. Salcedo - Direct/Mr. Nelkin

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1 A Yes, through MB Fuel.

2 Q Through MB Fuel? Okay, so MB Fuel -- well, what is MB
3 Fuel's business?

4 A I used to do service for them. They delivered oil and,
5 you know, heating oil and to service for the equipment.

6 Q So anything connected with an oil thing? All right. And
7 you did that for Mr. Friedman's companies?

8 A Mr. Friedman had a problem, he called MB Fuel. They used
9 to send me to service the equipment.

10 Q Okay. Were you paid directly or did that go through MB
11 Fuel?

12 A Goes through MB Fuel.

13 Q All right. Tell me when you were at you were at Two
14 Rivers, did you have a computer?

15 A No. Two Rivers had a computer in the office, not
16 personally.

17 Q Okay. But in your -- did you use a computer at Two
18 Rivers?

19 A Their computer.

20 Q Okay. Just tell me what you used that computer for.

21 A Look up parts for Two Rivers.

22 Q Okay. And did you use a computer anywhere else to look
23 for parts?

24 A No, only Two Rivers' computer.

25 Q So you never used a computer at any other company to look

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1 for parts?

2 A Well, once in a while, you know, for Associated Fuel or
3 MB Fuel if I need something, you know.

4 Q And where were the computers that you would have used to
5 do that work?

6 A On their place, on their premise.

7 Q So let's just say when you were at MB Fuel and you needed
8 to use a computer, what computer would you use?

9 A I would use anyone. I barely used the computer at MB
10 Fuel. I would go to the supply house because Pronto Heating
11 is right there go on the floor and talked to him what I
12 wanted.

13 Q But if you needed to use one at MB Fuel, you could use
14 anyone up there?

15 A No. I will probably ask the dispatcher to, you know, to
16 use his, you know, but very rare.

17 Q All right. Now, you said that you helped Ms. Rivera
18 remove certain things from Two Rivers?

19 A Yes, I did.

20 Q What did you help her remove?

21 A A couple of boxes, a few boxes. I don't remember exactly
22 what I did.

23 Q Okay. And what did you do with those boxes?

24 A I load them up in my truck, I took them to the Bronx,
25 delivered to her office.

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1 Q Okay. Did she already have an office there?

2 A They made an office for her when they moved her -- she
3 had one from before and then she, you know.

4 Q Okay. And did you help her put things in the boxes?

5 A No.

6 Q The boxes were already done?

7 A Yes.

8 Q Okay. Did you help her unload the boxes?

9 A No. I unloaded them out of my truck and took them
10 upstairs to her place and that was it.

11 Q Okay. And you said that Mr. Friedman told you to do
12 that?

13 A To help her move from Two Rivers back to the Bronx.

14 Q Okay. When you -- did you do anything else during that
15 visit?

16 A No.

17 Q Did you change any locks?

18 A No.

19 Q You didn't change any locks on any doors?

20 A No. I'm not a locksmith.

21 Q Okay. And how did you get into the building?

22 A With a key.

23 Q With a key?

24 A Sonia was there present with me.

25 THE COURT: I'm sorry; I didn't hear the last

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1 answer.

2 THE WITNESS: Sonia was there present. I wasn't by
3 myself.

4 Q Did you try and use the card to get in?

5 A I don't have a card key. I gave them up before I left to
6 Sandra.

7 Q So you are saying on the day that you came to the
8 building, you didn't have a card key?

9 A No.

10 Q Okay. Do you know if Sonia had a card key?

11 A Who?

12 Q Sonia.

13 A Probably.

14 Q Where is the door with the key?

15 A Where is the door with the key? Next to the big gate in
16 front of the building.

17 Q Is the card key reader there?

18 A There's a card key reader, sure.

19 Q Is can use either a key --

20 A Or the card, sure.

21 Q Do you know why Sonia wouldn't have used her card to get
22 in?

23 MR. FINKEL: Objection.

24 THE COURT: Overruled.

25 MR. FINKEL: Assuming facts not --

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1 THE COURT: I said overruled.

2 Q Where did you get the keys?

3 A Which key?

4 Q The one you used to get into the building?

5 A I used to open up the building every morning, 7:00 in the
6 morning to have the building ready for the employees to come
7 in at 8:00 to start working. That used to be part of my job,
8 open up the place, make sure everything is ready to go.

9 Q When Mr. Friedman told you to no longer come to the
10 facility, did he ask for the keys back?

11 A About a week later I gave him the key back.

12 Q Were there any other Two Rivers keys on there besides the
13 front door?

14 A The elevators key I had.

15 Q Elevator key? Okay. Did you have to put a code in to
16 get up to the office?

17 A Yeah.

18 Q Okay. And did you have that code?

19 A Yes, I did.

20 Q Okay. What were you -- what reason did you have the code
21 to get into the office?

22 A Well, the same code was for the service room office where
23 I used to sit, it was the same code for every door.

24 Q So the code for the office --

25 A The closet had a code. That was the same code for

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1 everything.

2 Q Okay. Did you go to the Two Rivers office on any other
3 occasion besides that one?

4 A Not to the office. I went to the facility to pick up the
5 oxygen tank to return it back to the place where we had the
6 tank rented from.

7 THE COURT: I'm sorry, it's been bothering me from
8 the first time. This is the same assembly tank?

9 THE WITNESS: Yes.

10 THE COURT: It's a coffee company. What do they
11 need that tank for?

12 THE WITNESS: There's a lot of machines from metal
13 to metal, to heat up metal, bend metal.

14 THE COURT: I see, just curious.

15 THE WITNESS: We had a welding machine there.

16 THE COURT: Got it.

17 Go ahead. Sorry to interrupt.

18 BY MR. NELKIN:

19 Q What I'm asking is, during your normal duties at Two
20 Rivers, did you ever have a reason to be in their office area?

21 A Repeat that again, please.

22 Q When you were working at Two Rivers --

23 A Yes.

24 Q -- you were not in the office; is that correct?

25 A Right, I was not in the office.

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1 Q Okay. Did you ever go upstairs while you were --

2 A Yes.

3 Q What -- what were the reasons you would go upstairs?

4 A Every time I needed a part, I looked it up in the
5 computer, I copied the number. I go to Eugene Schreiber, can
6 you order this for me, please. And he used to order the parts
7 that I needed because I was not -- I had no authority of
8 ordering anything.

9 Q Did you used to buy parts for Two Rivers?

10 A Eugene buy the parts.

11 Q You never bought any parts for Two Rivers?

12 A Not personally, no.

13 Q You interview used any, like, Mr. Friedman's credit card
14 to buy any parts for Two Rivers?

15 A When we were building, building the building, the Two
16 Rivers, I had a -- you know, when I needed something, he wants
17 to know, he lent me his credit card. I used to go to Home
18 Depot, whatever to pick up a bulb, a screw or whatever.

19 Q Did you have a credit card you could use for Two Rivers's
20 expenses?

21 A No.

22 Q Did you ever travel on behalf of Two Rivers?

23 A Yes.

24 Q Where did you travel?

25 A I went to Florida.

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1 Q Okay. And what did you do in Florida?

2 A When they were building a machine there, I went, Eugene,
3 I went with Eugene Schreiber to Florida to the factory where
4 they were building the machine.

5 Q And were you trained there or --

6 A Yeah.

7 Q Okay. Were there any problems when you were down there?

8 A I wasn't too happy the way the machine was working.

9 Q So what happened?

10 A I took the plane back to New York from Florida back to
11 New York.

12 Q And do you know if there were any complaints about you?

13 A No.

14 Q Did you incur any expenses on that trip?

15 A Sure, hotel and lunch, food.

16 Q And how did you pay for them?

17 A Schreiber paid for them with a credit card.

18 Q So all the expenses were paid for by Mr. Schreiber?

19 A Yes.

20 Q Okay. Besides the occasional Home Depot purchase, did
21 you ever purchase any equipment or any other things for Two
22 Rivers?

23 A We used to go to, I think it's called Global store with
24 Schreiber and we used to pick up stuff together. Whatever
25 what I need, he go with me or he invited me, we bought

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1 equipment together. But by myself, I never did.

2 Q So you weren't issued a card or allowed to use someone
3 else's card?

4 A No.

5 Q Did you ever turn in receipts to Ms. Rivera?

6 A Yes. Did I? I might; I don't know.

7 Q Did you ever turn in receipts to Ms. Ezell?

8 A Ms. Ezell? Well, depends on what I'm buying for. You
9 see what I'm saying?

10 Q Well --

11 A Which company are we talking about, Two Rivers or MB
12 Fuel?

13 Q Which companies did you buy --

14 A MB Fuel I used to buy parts, go to Pronto pick up the
15 parts, sign for it and give the receipt to Sylvia or drop them
16 off in the box in the office, you know.

17 Q Okay. And did you have a card that you could use to do
18 that?

19 A No. We have opened accounts.

20 Q What do you mean by "open accounts"?

21 A That I go pick up the parts and I tell them and that was
22 it.

23 Q And then who would you get a bill?

24 A The company will get a bill.

25 Q Then why did you have to turn in receipts?

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1 A To match the receipt for what the bill is, you know. You
2 know when you go, you sign for it. Then you sign the receipt,
3 you take the receipt, you drop it off and eventually they will
4 get a monthly bill.

5 Q But then what's the purpose of the receipt?

6 MR. FINKEL: Objection.

7 THE COURT: Sustained.

8 Q Mr. Salcedo, were you aware that there was a police
9 report that --

10 A I am now.

11 Q Have you had a chance to report that police report?

12 A Yes.

13 Q Okay. Would you turn to Exhibit 6.

14 THE COURT: Whose 6?

15 MR. NELKIN: Plaintiff's.

16 Q I'm looking at page 2.

17 A Which number exhibit?

18 Q Exhibit 6.

19 A Six? (Perusing.) Okay.

20 Q And I believe this police report, if you look at the
21 first page of it, it says "date and time of report" about an
22 inch or two off the bottom is March 3, 2015.

23 A Mm-hmm.

24 Q And I believe it's reporting something that happened the
25 day before. Does that help you fix the time that you went to

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1 Two Rivers?

2 A It's possible, sure.

3 Q If you could turn to page 2, well, did you see anyone
4 when you went to Two Rivers?

5 A Yes. There was two, two workers there.

6 Q Who were they?

7 A I don't know the name?

8 Q You don't know the name?

9 A No.

10 Q Okay. And if the report says that they observed you
11 trying to swipe into the building, would you disagree with
12 that?

13 A Yes, I do.

14 Q Okay. But you don't dispute that you were there?

15 A I was there, twice before -- after I left, definitely.

16 Q Okay. When you were there, did you do anything to any of
17 the machines?

18 MR. FINKEL: Objection, Your Honor. What date?
19 When are we talking about?

20 THE COURT: The date referenced in the police
21 report?

22 MR. NELKIN: Yes.

23 THE COURT: Okay. Since everybody else knows what
24 we are talking about, I will allow it.

25 Q On that date, did you --

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1 A For what reason?

2 Q I'm not asking for what reason. I'm just asking --

3 A No.

4 Q -- you didn't --

5 A They saw me going to one of the machines because we had a
6 set of Allen key in the machine which we used to adjust
7 machine, which is my tool. So when I grabbed my tool and I
8 left. I think that's the date that I helped Sonia move out of
9 there.

10 Q Yes.

11 A You know.

12 Q So you did go near the machine?

13 A Yes, I did, definitely.

14 Q And just explain to me what you did there.

15 A I grabbed a set of Allen keys.

16 Q Allen keys?

17 A Yes, a key like an L-shape like a stop sign.

18 Q Yes, I understand. But where were they?

19 A Inside the machine to -- we used that key to adjust the
20 boxes goes this way (indicating). They dropped a little thing
21 that flips the box around. That things always needed to be
22 adjusted. So I kept a set in there for that.

23 Q So if you --

24 THE COURT: Wait. You went back in there. That was
25 the purpose, to get the set of Allen keys?

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1 THE WITNESS: Yeah, that's it. That was what I did,
2 I helped Sonia move Sonia out. So at the same time I went to
3 the machine, I grabbed my tool. It's a tool.

4 THE COURT: Got it. Go ahead.

5 BY MR. NELKIN:

6 Q Okay. Now, you said that you needed that those Allen
7 tools --

8 A It's a tool.

9 Q -- to adjust the machine?

10 A Right.

11 Q So wouldn't Two Rivers have needed that same set of Allen
12 keys?

13 A It's my personal tools.

14 Q You bought them?

15 A Yeah, my tools that I bought when I went to work for Two
16 Rivers to have my own tools at Two Rivers.

17 Q Did you -- did you tell anyone that you were going to
18 take the --

19 A No.

20 Q -- tools?

21 A No.

22 Q Okay.

23 A Not that -- not that my tools, yes, but not that, you
24 know, I mean, it was mine, so.

25 Q Okay. Now, did you -- well, if someone said that the

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1 wires were tampered with, would you --

2 A Sure they were tampered with. It was me.

3 Q It was you?

4 A Yeah, but I didn't tamper. I was working on the machine.

5 Q At the same time that you were picking up the boxes?

6 A No, that never happened, no. You are confused.

7 Q Do you know what the word "tampered" means?

8 A When you try to mess something up, I guess.

9 Q Okay. So when you said -- when I asked you if you
10 tampered with the machine -- someone tampered with the machine
11 and you said "it was me" --

12 A I don't mean -- I was the one, the day that I had, that
13 Eugene came in, had the discussion with me, I was working on
14 that machine.

15 Q And then you came back --

16 A To get my Allen key set, not out of the same machine,
17 different machine. You got about ten machines in there.

18 Q Which one do you think the workers observed you going to?

19 A To the machine that we bought in Florida, the packing
20 machine.

21 Q Okay. And how do you know which one was thought to be
22 tampered with?

23 A I figured it's the tampered machine because I was the one
24 working on that machine. When I left, I was working on it, I
25 picked up my tools and --

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1 Q Okay. But the police report doesn't say which machine
2 is --

3 A But I know that's the machine you guys are talking about.
4 You know, that's the only machine I touch because I was
5 working on that machine earlier in the morning to get it ready
6 for the day work.

7 Q Okay. But no one -- did anyone tell you which machine
8 people thought had been tampered with?

9 A No. I read this in the book, the thing here.

10 Q So you just read that a machine was tampered with and you
11 assumed it was the one you had worked on?

12 A Sure. Which other machine? I haven't touched other
13 machines.

14 Q Yeah. If they were your personal tools, why didn't you
15 just ask someone to tell someone that you were going to go
16 pick them up?

17 A I didn't.

18 Q Why not did didn't you ask Mr. Friedman?

19 A I don't think he was there.

20 Q But you talked to him about going to the building. You
21 said he told you --

22 A Yeah, but he called me on the phone to go help Sonia
23 move.

24 Q Okay. Did you take anything else besides the boxes and
25 the tools when you left?

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1 A No, only my personal things.

2 Q Tell me what your personal things were.

3 A Tools, screwdrivers, wrenches ratchets, a die set to make
4 threads, a drill.

5 Q And what proof would you have that you owned those?

6 A Still have them. You know, they are old tools and I have
7 them.

8 Q What proof would you have that you bought?

9 MR. GRANTZ: Objection to relevance.

10 THE COURT: Why is it relevant if he has proof or
11 not that he bought them?

12 MR. NELKIN: Well, in this case we are alleging that
13 he came in and took certain things and sold certain things.
14 And I would like to --

15 THE COURT: You are not disputing what he took.
16 It's a question of whether he owns them. What's the
17 relevance?

18 MR. NELKIN: I'm just trying to figure out what
19 records --

20 THE COURT: I know what you are trying to figure
21 out. Why is it relevant?

22 MR. NELKIN: I just thought it was relevant to the
23 veracity of the within.

24 THE COURT: Move on.

25 I think you don't have receipts for those, right?

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1 They are old tools?

2 THE WITNESS: They are tools. They are my tools.

3 THE COURT: Okay.

4 THE WITNESS: I do heating and plumbing. I carry a
5 lot of tools. I carry pipe wrenches. I carry threaders in my
6 truck. I carry screwdrivers. I carry wires, different gauges
7 of wires.

8 THE COURT: Stop.

9 Move on.

10 BY MR. NELKIN:

11 Q What happened to your card key?

12 A I turned them in to Sandra when she was working there
13 before I left.

14 Q What day did you turn them in?

15 A The day before the day of the police report, yes.

16 Q Okay. Could you turn to Exhibit 32. Well, actually,
17 before we turn to Exhibit 32, what time did you go to Two
18 Rivers to pick up the equipment?

19 THE COURT: This is still on that same date of the
20 police report?

21 MR. NELKIN: Yes.

22 A The day before, I think. That's the day I left.

23 Q I'm asking what time of day you went?

24 A No, I picked up my tools the day that Eugene had the
25 argument with me. That's the day I left. I picked up all my

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1 stuff on the same day.

2 Q Okay. That was the day before you came back with
3 Ms. Rivera?

4 A Yeah.

5 Q Okay. So if it you came back with Ms. Rivera on the 2nd,
6 then you picked up all your tools on the 1st?

7 A Right.

8 Q And you turned in your card key on the 1st?

9 A Right, with Sandra.

10 Q Okay. What time did you come back to Two Rivers with
11 Ms. Rivera?

12 A It was late afternoon.

13 Q Around 5:00?

14 A It's possible.

15 Q Okay. Can you turn to Exhibit 32, please. And I will
16 tell you these are screen shots of Two Rivers's log for the
17 card keys. And if you look at the first page, you will see
18 that there are five things in a row. They start on line, I
19 think, 6, and they go up to line 10 where it says, "Access to
20 area denied." And they appear to all take place on March 2nd
21 at 5:07, roughly a couple of seconds apart.

22 A Sonia had a key to go into the building. She had a card
23 so we went that way. I don't know what you are talking about.

24 Q But I thought you said you used your key to get in, not
25 Sonia's?

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1 A You know, could have been mine's or hers.

2 Q Okay. I would like you to turn to the next page and it
3 says, "User Jorge Salcedo card" and it has a number for those
4 five entries where it says "access was denied." Can you tell
5 me why your card which you supposedly turned in was being
6 used?

7 A I don't know if that's my card or not. I left my card
8 with Sandra. They could have used my card to go in a few
9 times. I have no idea. My card was in the premise. Anybody,
10 you know, Schreiber could have grabbed it and go, go back and
11 forth to fabricate this; I don't know.

12 Q Okay. But your testimony is you can't explain why your
13 card shows up as trying to come in at exactly the time --

14 A My testimony is that I went twice back to that place
15 after I left. That's my testimony.

16 Q Okay. And it was around this time?

17 THE COURT: The question is, you returned with
18 Ms. Rivera?

19 THE WITNESS: Yes.

20 THE COURT: And she used her card -- wait, wait.
21 Regardless of what who used whose card, was there anybody else
22 with you or was it just the two of you?

23 THE WITNESS: It was probably just the two of us; I
24 don't remember. But there should have been more people there.

25 THE COURT: No, no, but to get in?

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1 THE WITNESS: Oh, it's a possibility.

2 THE COURT: Who else was with you when you tried to
3 get in?

4 THE WITNESS: No, I went in with Sonia and me.

5 THE COURT: Just the two of you?

6 THE WITNESS: Yeah.

7 THE COURT: So there was nobody else? When you two
8 entered, there was nobody else using the card trying to enter?

9 THE WITNESS: Right; I don't remember.

10 THE COURT: Okay. And I only ask just you had said
11 somebody else might have used your card.

12 THE WITNESS: Well, I'm saying they showed me the
13 stuff; I don't know.

14 THE COURT: Okay, got it.

15 THE WITNESS: I have no idea.

16 BY MR. NELKIN:

17 Q And were any of the partners of Two Rivers there?

18 A I don't remember, honestly don't remember.

19 Q Okay. Could you turn to Exhibit 112. This is a document
20 that your lawyer Mr. Finkel filed with the Court. And I would
21 just like to ask you about a couple of statements in it. It
22 says that, "Mr. Salcedo was not fired by Two Rivers."

23 A I wasn't fired by Two Rivers.

24 Q Okay. You just were -- but did they stop paying you?

25 A Yes. Like I said before, when I called Mr. Friedman to

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1 go pick up my tools to go back to the Bronx and that's what I
2 did. I wasn't fired. I left because he told me to leave.

3 Q But from that point on, Two Rivers wasn't paying you?

4 A Right.

5 Q And no one else was paying you?

6 A No.

7 Q And until you started working at N&S a couple of months
8 ago --

9 A Right.

10 Q And did you ever file for unemployment?

11 A Yes, I did.

12 Q You did? Okay. And when did you file for that?

13 A Maybe two weeks after that.

14 Q Okay. And what did you put down as the reason for filing
15 for unemployment?

16 A Argument between owners.

17 Q But did you say that you were terminated or fired?

18 A No, I told them I left because they told me to. I told
19 them what I'm telling you.

20 THE COURT: Wait, wait. Why -- I don't understand
21 the testimony. Are you saying you quit?

22 THE WITNESS: Practically, you know.

23 THE COURT: No, no. Whose decision was it, yours or
24 theirs?

25 THE WITNESS: It was Mr. Friedman's decision for me

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1 to go back to the Bronx and --

2 THE COURT: So he told you you are no longer working
3 for Two Rivers?

4 THE WITNESS: Not directly.

5 THE COURT: Look. Somebody made a decision that you
6 are no longer working at Two Rivers. It's either you or one
7 of your employers, right? Was it you?

8 THE WITNESS: Yeah.

9 THE COURT: You decided?

10 THE WITNESS: Right.

11 THE COURT: You quit?

12 THE WITNESS: Yeah, I quit.

13 THE COURT: So what did Mr. Friedman tell you?

14 THE WITNESS: Pick up your tools, go back to the
15 Bronx.

16 THE COURT: Had he not told you that --

17 THE WITNESS: I was probably still being abused by
18 Eugene there.

19 THE COURT: So in what sense did you quit? I'm just
20 trying to understand, sir. You are telling me two things that
21 don't add up.

22 THE WITNESS: I don't feel that I was fired.

23 THE COURT: You don't feel that you were fired?

24 THE WITNESS: Right, because, you know, because of
25 Mr. Friedman never told me to pick up my tools.

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1 THE COURT: So Mr. Friedman told you to pick up your
2 tools and go somewhere else?

3 THE WITNESS: Right.

4 THE COURT: Not to work for Two Rivers anymore, and
5 your feeling about that is that's not firing?

6 THE WITNESS: Right.

7 THE COURT: I understand what you are saying.

8 Go ahead.

9 BY MR. NELKIN:

10 Q Now, the next page, you say that he told you to remove
11 your tools and to report to Mr. Friedman's Bronx office?

12 A Right.

13 Q What were you to do at the Bronx office?

14 A What did I do at the Bronx office?

15 Q Yes.

16 A Nothing, you know.

17 Q So you weren't being paid? You just were to go to the
18 office?

19 A I went to the office, you know, a couple of times. That
20 was it, you know, never been back.

21 Q What was the reason for you to go to the Bronx office?

22 A That's the work we used; I don't know. I just went
23 there.

24 Q And what did you do there?

25 A Why would I do that?

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1 Q No, what would you do there?

2 A I won't do anything in the office. I'm not an office
3 guy.

4 Q Well, then, what did you do? And where did you do it?
5 You are at 431, I'm assuming.

6 A Right, okay.

7 Q Okay. And you are told by Mr. Friedman to go there?

8 A Okay. I met Sonia there and --

9 Q Okay. Now, what did you do? Did you just sit there or
10 did you work on the computer? Did you read a book?

11 MR. GRANTZ: Objection.

12 THE COURT: I'm sorry; I'm sorry. Wait. There's an
13 objection. Who objected?

14 MR. GRANTZ: There's three questions there.

15 THE COURT: So the objection is there are three
16 questions? Okay, let's ask each of them individually.

17 MR. GRANTZ: Yes, that's fine.

18 THE COURT: What did you do in the Bronx?

19 THE WITNESS: I didn't do anything in the Bronx.

20 THE COURT: You didn't do anything?

21 THE WITNESS: Right.

22 THE COURT: What was the next question?

23 MR. NELKIN: I said, did you read a book in the
24 Bronx?

25 THE COURT: Did you read a book in the Bronx?

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1 THE WITNESS: No.

2 THE COURT: What was the next question?

3 MR. NELKIN: Did you work on a computer in the
4 Bronx?

5 THE COURT: Did you work on a computer in the Bronx?

6 THE WITNESS: No, sir.

7 THE COURT: Are you satisfied, Counsel.

8 MR. GRANTZ: Yes, thank you.

9 THE COURT: Thank you.

10 BY MR. NELKIN:

11 Q And how many times did you go to the office there after
12 you left Two Rivers?

13 A I went back a few times to talk to Mr. Friedman, talk to
14 Sonia.

15 Q And what did you talk about?

16 A Friends, you know, what was next, you know.

17 Q And what was next?

18 A Next was I was out of a job. That was next.

19 Q So Mr. Friedman didn't have any advice for you?

20 A Yeah. You know, he advised, you know, he told me to go
21 back to work for as a mechanic for MB. I didn't want to work
22 as a mechanic, fixing trucks, you know.

23 Q Isn't that what you do now?

24 A No, I don't fix trucks. I am boiler, do boiler and
25 heating.

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1 Q I think I asked you earlier if you did roughly the same
2 thing for each --

3 A That's what I do.

4 Q Okay.

5 A Heating and plumbing.

6 Q And when you were at MB, I thought you said you used to
7 go and fix boilers at Mr. Friedman's buildings?

8 A Yes, and when I was an MB employee. But he owns trucks,
9 so they had no opening right now for boilers. So he asked me
10 if I wanted to stay on the floor to fix trucks.

11 Q Is it your testimony that some mechanics only fix trucks
12 and some mechanics only fix boilers?

13 A Yes.

14 MR. FINKEL: Objection, Your Honor. It's not
15 anywhere what the testimony --

16 THE COURT: He's asking if that is his testimony.
17 Did you hear the question, sir?

18 MR. FINKEL: I guess I didn't, Your Honor.

19 THE COURT: Okay. Then to the extent you didn't,
20 what I heard was, as I think the transcript will reflect, is
21 that your testimony? And I think that's not an objectionable
22 question. But are you raising an objection to that question?

23 MR. FINKEL: No, Your Honor.

24 THE COURT: Go ahead.

25 A There is different mechanics. They got mechanics for the

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1 trucks. Truck breaks down, has a flat, et cetera, et cetera.

2 And there's a different mechanic for boiler and plumbing.

3 Q And you were exclusively a boiler guy?

4 A Yeah.

5 Q You never fixed trucks before?

6 A Sure, I fixed trucks, but I didn't want to go back to
7 that.

8 Q So sometimes you were a truck guy and sometimes you were
9 a boiler?

10 A No, I was a boiler --

11 THE COURT: I think we can move on from trucks
12 versus boilers.

13 MR. NELKIN: All right.

14 Q So your testimony is that you had chose to be unemployed
15 rather than go back to work with your former employer?

16 A Yes, that's my testimony, exactly. I was waiting for an
17 opening again.

18 Q Okay. And how did you get the job at N&S?

19 A Through Ahearns.

20 Q Okay. Who also owned MB Fuel?

21 A So I think so. I don't know particularly who owns what.

22 Q Okay. And how did that job open, come to you?

23 A Well, when you asked me that about the mechanic, one of
24 them was Billy that worked with us. He got a job as a City
25 inspector, boiler City inspector. So I got his place there.

J. Salcedo - Direct/Mr. Nelkin

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1 He left to become a boiler City inspector.

2 Q All right. Let's move on to the next paragraph. Did you
3 turn any cameras around when you were at Two Rivers?

4 A No.

5 Q Did you erase any video?

6 A I have no idea about erasing video. I don't have no --
7 no.

8 Q Okay. Now, was Mr. Friedman there at the time you went
9 back with Ms. Rivera?

10 A I don't recall he was there.

11 Q I'm looking at the bottom of your lawyer statement. It
12 says that -- well, that the police report additionally
13 establishes -- let's just go on.

14 THE COURT: Why don't you just ask him a question
15 about what he remembers, what he observed, what happened,
16 instead of comparing it to something he didn't write.

17 MR. NELKIN: Okay.

18 Q How long were you in the office when that happened?

19 A When what happened?

20 Q When you removed the boxes.

21 A A couple hours, I guess, you know, about an hour, maybe;
22 I don't know.

23 Q Why did it take so long to move the boxes?

24 A Well, you got to walk from the hallway to the elevator,
25 take the elevator down, carry the boxes out.

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1 Q And how far a walk is that?

2 A It's a walk.

3 Q Is it more than 100 feet?

4 A I think so.

5 Q More than 200 feet?

6 A Maybe, maybe it's 200 feet, 150 feet.

7 MR. GRANTZ: Objection to the relevance, Judge.

8 THE COURT: Overruled.

9 Q So is your testimony that you took several hours or at
10 least an hour --

11 A Yes, at least an hour.

12 Q -- to move three boxes?

13 A Well, you know, I just move the three boxes. At the same
14 time we talk, we mingle, you know.

15 THE COURT: I'm sorry, who talked and mingled?

16 THE WITNESS: Sonia and I and, you know.

17 THE COURT: With whom did you mingle?

18 THE WITNESS: With Sonia.

19 THE COURT: I see.

20 THE WITNESS: You know.

21 THE COURT: Okay.

22 BY MR. NELKIN:

23 Q Okay. Let's move on. Did you use your phone -- well,
24 what phone did you have when you were at Two Rivers?

25 A I had an iPhone.

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1 Q And what happened to that iPhone?

2 A I traded it for this Samsung phone that I have.

3 Q I think your affidavit says you either lost it or traded
4 it in?

5 A Right.

6 Q So you definitely traded it in?

7 A I'm not saying -- no, it could have been either one.

8 Q You don't remember if you lost it or if you traded it in?

9 A Most likely I traded it in; I don't know.

10 Q And what's your service provider?

11 A T-Mobile.

12 Q Okay. And do you remember if they gave you a credit when
13 you turned in your phone?

14 A I lost my phone. The reason why was I think I went to
15 the pharmacy. I bought a Cricket phone for \$20 so I could get
16 a credit to buy a new phone. That's what happened.

17 Q And when did that happen?

18 A After I left Two Rivers. I don't remember the dates when
19 it happened. But I remember I went to the pharmacy, I bought
20 a cricket for about \$29, something like that, so I could get a
21 credit for returning a phone to buy a new one.

22 Q Wait. Did you lose your phone or you turned it in?

23 A I think I lost it because like I said, I lost it.

24 Q So you didn't get a credit for Cricket?

25 A No, I bought a Cricket phone next door which is a prepaid

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1 phone and I turned that in to T-Mobile as my phone so they
2 could give me credit for the new phone.

3 Q Okay. Did you read e-mails on your old phone?

4 A Excuse me?

5 Q On your iPhone, did you read e-mails?

6 A I read e-mail?

7 Q Yeah.

8 A Yeah.

9 Q Okay. And did you do that on your new phone?

10 A Yes.

11 Q Okay. And did you send e-mail on your phone?

12 A Once in a while I do.

13 Q Okay. And did you send it on the phone that you lost?

14 A When I had that phone.

15 Q Your phone, do you have to -- how do you get your e-mail?

16 A Through Hotmail.

17 Q And how do you access it on your phone?

18 A I open the screen, press the icon and mail it opens up.

19 Q Okay. So you don't have to put in any password?

20 A Oh, I do have a password, security password, definitely.

21 Q On the phone?

22 A Yes, on the phone to start it up.

23 Q I am just asking for your e-mail, you don't have to put
24 in --

25 A No, it's automatically in there.

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1 Q And was it that way on your old phone?

2 A Yes.

3 Q Did you use the other phone for Two Rivers's business?

4 A I used it once to text, to text to Eugene when he was in
5 China.

6 Q To text?

7 A Yeah, because I talked in the phone, what I say
8 translates it into text.

9 Q Did you ever send any e-mails by phone?

10 A I did, to China, to Eugene.

11 Q Well, were they texts or were they e-mails?

12 A I think it was texts. What's the difference? I don't
13 know the difference from text and e-mail. You are still
14 writing and talking.

15 Q Well, I guess they are different programs with different
16 ways of using the phone.

17 A I just press the little microphone on the thing and I
18 speak and it writes down whatever I want.

19 Q So you basically use both text and e-mail?

20 A I guess so, yeah.

21 Q And what about to Mr. Friedman?

22 A What about him?

23 Q Did you ever use your phone to communicate with
24 Mr. Friedman?

25 A All the time.

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1 Q Okay. And did Mr. Friedman ever communicate with you by
2 phone?

3 A Yes.

4 Q And was that texts?

5 A Sometimes text, sometimes he calls, yeah.

6 Q What about e-mail?

7 A Sometimes, very little e-mail.

8 Q What is your e-mail account?

9 A You want to know my e-mail account?

10 Q Yes.

11 THE WITNESS: Do I have to tell him my e-mail
12 account?

13 THE COURT: Yes.

14 A JS1567@hotmail.com.

15 Q Have you ever in any other e-mail accounts?

16 A Yes, I do. I have a Gmail.

17 Q What is that?

18 A Jorge with a "J," 1567@gmail.com.

19 Q Have you ever any other e-mail accounts?

20 A No.

21 Q What about a Brooklyn Beans account?

22 A Well, he opened one for me.

23 Q Did you use it?

24 A I don't recall using it, but according to the papers, I
25 did use it once or twice to talk to Mr. -- his father, Eugene

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1 to China, according to them. I don't remember doing that,
2 either, so I don't know.

3 Q But you don't -- you don't challenge the fact that that
4 happened?

5 A Oh, no, definitely that happened. I remember that
6 trailer.

7 THE COURT: You remember that --

8 THE WITNESS: That trailer, the merchandise that
9 came in --

10 THE COURT: Got it.

11 THE WITNESS: -- that he's asking me about.

12 BY MR. NELKIN:

13 Q And if you could just turn to Exhibit 33. Is that an
14 example of you using your Brooklyn Beans account?

15 A I can't hear what you said.

16 Q Oh, I'm sorry. Can you turn to Exhibit --

17 A I am on 33 or 34?

18 Q Thirty-three.

19 A Okay, I'm on 33.

20 Q Is that an example of you using your Brooklyn Beans
21 account?

22 A That's what it says.

23 Q Okay. And you don't -- you don't challenge that this is
24 an authentic document?

25 A I challenge the word that I used Brooklyn because this

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1 came out of my phone. In my phone, I don't use -- I didn't
2 have this Brooklyn Two Rivers e-mail, whatever you call it.

3 Q Why do you say it came out of your phone?

4 A Because that's how I text. I can't write that well. So
5 I call, I push the button, the microphone on my phone and I
6 speak to my phone and it writes whatever I want.

7 Q So you are saying that you don't remember sending a
8 text --

9 A I remember the text, but I don't remember the Brooklyn
10 stuff.

11 (Continued on the next page.)
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1 EXAMINATION BY

2 MR. NELKIN:

3 (Continuing.)

4 Q Okay. Thank you. And if you could turn to page -- to
5 Exhibit 34.

6 Do you remember this exchange?

7 A I could say I do.

8 Q You do?

9 A I think I do.

10 Q Okay. And can you tell me what this was about?

11 A That container was unloaded today, and in the container
12 we found two wooden crates.

13 Q So do you remember sending these e-mails?

14 A Huh?

15 Q Do you challenge that you sent this e-mail?

16 A I'm not challenging that I sent it. I'm challenging that
17 it says "Brooklyn," the Brooklyn e-mail thing. I don't
18 remember using that.

19 THE COURT: Leaving aside the address, does the
20 exchange --

21 THE WITNESS: It's possible.

22 THE COURT: That seems familiar to you?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 Q Did you work full time for Two Rivers?

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1 A Yes.

2 Q And did you work full time for Two Rivers in 2014?

3 A That's the year that I worked, sure.

4 Q Did you work for anyone else then?

5 A Two Rivers.

6 Q Can you turn back to Exhibit 33. Do you know what Gates
7 Place is?

8 A Yes, it's a building from Mr. Friedman.

9 Q And what were you doing there?

10 A Working on the heating system.

11 Q Was that the Two Rivers job?

12 A No, but I had an agreement with Mr. Friedman that he was
13 part of Two Rivers, and wherever he sent me I told me to do
14 certain things. Schrieber told me to do certain things I
15 would do it.

16 Q Would Mr. Schrieber tell you to do anything besides
17 Two Rivers work?

18 A Yes, I went to his house and fixed his boiler one day.

19 Q Okay.

20 A He had no heat.

21 Q What?

22 A He had no heat in his house. I went to Gene's house to
23 fix his boiler.

24 Q Was that before or after -- when did you do that?

25 A I don't remember the date but I was working for

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1 Two Rivers when that happened, too.

2 Q Did you work for Two Rivers full time in 2013?

3 A Probably. I told you I was bad on dates.

4 Q And you said that you always earned the same amount?

5 A Yes.

6 Q Okay. If I have a W-2 for you from 2014 and it shows
7 that your wages and tips were \$83,150. And I have one for you
8 for 2013 and it shows that your wages and tips were only
9 \$5,200. Would you be able to explain why there was such a big
10 difference in number?

11 A Sure. I do a lot of side work.

12 Q You just told me you don't do --

13 A Not with Two Rivers, I wasn't with Two Rivers. I didn't
14 live in Two Rivers, you know, I had a life, too, you know.

15 Q This is what Two Rivers is paying you. This is a W-2
16 from Two Rivers for \$83,150 for 2014, and there is a W-2 for
17 2013 for only 5,000 something dollars?

18 A \$5,000?

19 THE COURT: Do we know the dates of employment in
20 2013?

21 MR. NELKIN: I believe that he was -- I'd have to
22 look that up, your Honor.

23 Q What dates were you working in 2013?

24 A What dates?

25 Q Yes, for Two Rivers?

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1 A Well, Two Rivers, I used to five days, six days.
2 Sometimes working on Sundays, sometimes we didn't. No
3 Saturdays, you know.

4 Q Is it possible?

5 A No hours. Open up at 7:00 sometimes work 'till
6 8:00 o'clock at night. Still I was there.

7 THE COURT: At least to the extent that I was asking
8 the question, were you working for Two Rivers all through
9 2013?

10 THE WITNESS: I think so.

11 THE COURT: Okay. So then any idea why your
12 W-2 would be less, if it's true, I haven't seen it, why a W-2
13 for 2013 would be so much less than 2014.

14 THE WITNESS: Well, in 2014 I must have been -- in
15 2013, I was still working for my building and doing the
16 construction on Two Rivers. I don't know.

17 THE COURT: You don't know.

18 THE WITNESS: I don't know.

19 THE COURT: I don't want you to guess.

20 Q And do you remember if when you worked for -- did the
21 boiler work for Mr. Schrieber, whether you were working at MB
22 at that time, or whether you were working at Two Rivers at
23 that time. Is it possible that you were work at MB?

24 A It's a possibility. When I had contacted with Schrieber
25 that's when I started working in Two Rivers in the sense of

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1 the construction, putting the machines together, doing the
2 wiring, et cetera, et cetera.

3 Q Do you know why your paycheck, some of your paychecks are
4 for \$324.37, and others are for \$1,400 in differing amounts?

5 A I did more hours.

6 Q So you were an hourly worker?

7 A Not really, but, you know, it was more work.

8 Q I guess -- let me ask you. Were you paid by the hour or
9 paid by salary?

10 A I was paid by salary in Two Rivers.

11 Q But you told me your salary --

12 A For what company are those checks?

13 Q Two Rivers.

14 A Both?

15 Q Yes.

16 A I don't know.

17 Q So you have no recollection of your salary amount from
18 Two Rivers changing?

19 A Not that I know of.

20 Q And you have no recollection of the exact amount you were
21 paid?

22 A You just told me them.

23 THE COURT: No, he's asking what you recall.

24 THE WITNESS: No.

25 Q And you do recall that you were a salaried employee and

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1 not an hourly employee?

2 A Can you repeat that again, please.

3 Q You testified you were a salaried employee, not an hourly
4 employee?

5 A Right.

6 Q So you had some salary that was established; correct, it
7 didn't change by how many hours you worked?

8 A Right.

9 Q Thank you.

10 Did Mrs. Ezell have anything to do with the
11 distribution of your checks?

12 A Sylvia?

13 Q Yes.

14 A When I was with MB.

15 Q What about when you were at Two Rivers?

16 A No.

17 Q Who gave you your check?

18 A Sonya used to print them out.

19 Q And Sonya would hand you the check?

20 A They gave me a pack of checks and I would give them to
21 the employees.

22 Q So your job consisted --

23 A I did that, too, you know. Whatever they did, I used to
24 try to do the best I can.

25 Q Were you ever involved in any exchange of checks for

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1 cash?

2 A I don't remember. I don't think so.

3 Q You don't remember or you don't think?

4 A I don't think so.

5 Q Is it possible?

6 A I could probably give a check to Sonya or Sylvia to cash
7 to for me or something of that sort. I don't know. It's a
8 possibility.

9 Q What about to Mr. Friedman?

10 A No, Friedman don't carry cash.

11 THE COURT: What was that?

12 THE WITNESS: I don't think Mr. Friedman carries
13 cash.

14 THE COURT: He doesn't carry cash.

15 THE WITNESS: I don't think so.

16 THE COURT: I wasn't sure what you said.

17 Q If a check of yours got into Mr. Friedman's bank account,
18 could you explain that?

19 A I must have gave it to him to cash it for me if that's
20 the case.

21 Q But you have no recollection?

22 A No recollection. I don't practice that that often to
23 remember if I ever did or not.

24 Q When you say you don't practice?

25 A Once in a while, I gave a check to Sylvia to cash for me.

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1 That's what I mean by that in general.

2 Q And if you did get a check cashed, how would they give
3 you the exact amount of check?

4 A Yes. It's my money.

5 Q If it was for 87 cents they would give you 87 cents?

6 A They would give me a dollar for the 87 or whatever, you
7 know.

8 Q Would they charge you anything for it?

9 A No.

10 Q Let's turn --

11 THE COURT: Before you move on. I don't think I
12 understood your testimony. So sometimes you think maybe --

13 THE WITNESS: To Sonya or Sylvia.

14 THE COURT: But not Mr. Friedman.

15 THE WITNESS: If I ever did it, it could have been
16 maybe in a blue moon. I don't remember giving him any checks.

17 THE COURT: Okay. Go ahead.

18 Q And when you said you might have given it to Sonya or?

19 A Probably most likely Sylvia.

20 Q Okay. But you just told me that you didn't have --
21 Sylvia didn't have any connection with your checks?

22 A To cash it. We live in the Bronx together.

23 Q When you say you live together?

24 A She lives four blocks from my house or five blocks, you
25 know? I go visit the building where she works, you know.

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1 Q Have you been to her house?

2 A Sure.

3 Q Does she have a computer there?

4 A I have no idea. I go over there sometimes. She calls me
5 to change the light bulb or fix something, or the faucet is
6 leaking. She calls me, I go fix it, you know? I do her a
7 favor, you know.

8 Q But you don't remember seeing a computer there?

9 A No. I go to the kitchen or the bathroom or to the boiler
10 room downstairs in that building, that house. I don't ask too
11 much questions. I don't investigate too much.

12 Q What about Ms. Rivera. Did you ever go to her house?

13 A No, the house has gas.

14 Q Has what?

15 A Runs on gas. The boiler is gas.

16 Q You never do any favors for her?

17 A Very little. Gas doesn't give you too much problems.
18 Sonya has oil in her house. Oil is different.

19 Q Don't they live in the same building?

20 A I will give you an example. It's all one big lot. Five
21 different houses together A, B, C together.

22 Q But have you ever been to Ms. Rivera's house?

23 A I've been there, sure.

24 Q And you've been there enough to know it runs on either
25 gas?

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1 A I serviced that equipment when it needs to be serviced.
2 Maybe go there once every two years, your know.

3 Q So you serviced the equipment there?

4 A Yes.

5 Q So you serviced both Ms. Ezell and Ms. Rivera?

6 A Yes.

7 Q Did you do that for a company, or did you do that just as
8 a friend?

9 A MB Fuel.

10 Q MB Fuel?

11 A Sylvia, I help her out when she needs help. She has no
12 husband, has her son home. So, you know, she doesn't know how
13 to change a bulb she calls me five, four blocks away from her
14 house.

15 Q What about Sonya? Who does she live with?

16 A She lives with her husband, her family, I guess.

17 Q So just the mechanism. So you got paid in Two Rivers in
18 New Jersey, and instead of going to your bank in the Bronx you
19 would sometimes have Ms. Ezell?

20 A Once in a blue, not sometimes, not that often. Sometimes
21 is very often. It's not often. Maybe once a year who knows.

22 Q Can you just give me a reason why you might have needed
23 to have her cash it?

24 A Maybe the bank was closed that day and I needed money for
25 something or whatever.

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1 THE COURT: Have you ever use the ATM card?

2 THE WITNESS: Very, very, very, very rare. My wife
3 takes care that. If I need money, I ask her to give me a
4 hundred dollars for the week or \$200 for the week she takes
5 care of that.

6 THE COURT: If you need cash, you don't go to the
7 ATM, you cash the check with Sylvia.

8 THE WITNESS: No, I told my wife.

9 THE COURT: I see.

10 THE WITNESS: To give me \$200.

11 THE COURT: Okay.

12 Q Does your ATM let you put a check in and deposit a check?

13 A My wife does that. I give the envelope to my wife.

14 Q Okay. Thank you.

15 THE COURT: Is this a convenient time for our
16 morning break?

17 MR. NELKIN: Fine with me, your Honor.

18 THE COURT: Let's take 15 minutes.

19 (Witness leaves the witness stand.)

20 (A recess in the proceedings was taken.)

21 THE COURT: Have a seat, please.

22 (Witness takes the witness stand.)

23 THE COURT: I think we're missing Mr. Finkel.

24 All right. You may continue.

25

J. Salcedo - Direct/Mr. Nelkin

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1 EXAMINATION BY

2 MR. NELKIN:

3 (Continuing.)

4 Q Did you ever use your iPhone to take photos.

5 Did you ever use your iPhone to take photos?

6 A Sure.

7 Q Did you ever use your iPhone to fake photos at

8 Two Rivers?

9 A Sure.

10 Q What would you take photos of?

11 A Numbers, adjustments in the machines. The adjustments in
12 the machine were made with numbers like 09, 020, like the
13 timing on the things. So when I find a number that the
14 machine works the best, I used to take a picture of it to keep
15 it. So just in case it gets whacked, I would go to that
16 picture and set the same numbers.

17 Q It would be useful information to have for those
18 machines?

19 A At that time.

20 Q Okay. Well, wouldn't it remain the same?

21 A No, because the machine wears out.

22 Q As long as the same machine is working, that would be a
23 useful piece of information?

24 A The machine works for five days it might change because
25 it wears.

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1 Q Okay. And how many photos did you take?

2 A I had about two or three. I had them, I don't have them
3 anymore.

4 Q You don't have them any more?

5 A I would have to search my phone to see if they were
6 transferred. They were in the phone, whatever.

7 Q I thought you said you don't have the iPhone anymore?

8 A I don't have the iPhone anymore. I have a Samsung phone.
9 We're talking about when I was with Two Rivers?

10 Q Right. Did you transfer the data from your phone?

11 A I lost the phone. Remember I bought a Cricket phone I
12 told you.

13 Q Do you have the photos or not?

14 A I don't think so.

15 Q Well, where could you have them?

16 A If I have them, they would be on a little SD card that I
17 have at home just in case.

18 Q Now, did you look at Exhibit 108. Can you look at
19 Paragraph 8. "The number of photographs at my work at
20 Two Rivers were taken with this iPhone. I downloaded these
21 photos to a storage device that I maintain in my home. The
22 storage device contains numerous earlier remember photographs
23 of a personal nature.

24 A It's possible I might have them. That's the answer I
25 gave you.

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1 Q But you swore in an affidavit.

2 THE COURT: It says what it says. Do you have it?

3 THE WITNESS: I have to look to see if I have to.

4 THE COURT: You already said that you have it so
5 produce it, please.

6 Q And can you tell me how you downloaded photos what was
7 the mechanism?

8 A Plug them in. You plug it into the computer.

9 Q You plug it into a computer?

10 A Yes.

11 Q And you save it on the computer?

12 A Yes. And I put it in the little SD card.

13 Q So it would also be saved on the computer?

14 A I don't save anything on the computer.

15 Q Then how does it get to the card?

16 A Through the computer.

17 Q So your testimony is that it just transfers without?

18 A I don't save them on the computer. The computer goes
19 bad.

20 Q When did you download those photos?

21 A A long time ago. I don't remember. That's why I have to
22 see if I have them.

23 Q Okay. And which computer would you have downloaded them
24 on to?

25 A Well, I used to have an Apple computer which died. So I

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1 bought a new computer not too long ago. I bought an Ace
2 computer. I don't have them in that computer.

3 Q What happened to the Apple computer?

4 A It got a heart attack and died on me. Broke.

5 Q Where is it?

6 A Maybe home somewhere. I don't know.

7 Q You were asked to prepare an affidavit detailing all the
8 computers that you had?

9 A Yes.

10 Q Did you mention that Apple computer on that affidavit?

11 A I don't recall if I did or not. What does it say?

12 THE COURT: You have it in front of you.

13 Q You can look at it, it's 108?

14 A No. 8 you're saying?

15 Q No, just read the whole affidavit?

16 THE COURT: I know we had a couple of affidavits for
17 some people. Was this the only one?

18 MR. NELKIN: There were two.

19 THE COURT: Is the Apple mentioned in either one?

20 MR. NELKIN: No. Do we need to -- sorry.

21 THE COURT: Come on.

22 Q So, Mr. Salcedo, are there any other computers besides
23 the Apple computer that are not mentioned in your affidavit?

24 A I did not mention the Apple computer. I don't believe it
25 exists, it's garbage. That's what you're asking me.

J. Salcedo - Direct/Mr. Nelkin

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1 Q When did it quit working?

2 A A long time ago. I don't remember the dates.

3 Q After you left Two Rivers?

4 A Maybe when I was in Two Rivers. It's a long time.

5 Q Your affidavit says, well, when your first one died, did
6 you get the new one right away?

7 A No.

8 Q How much time elapsed?

9 A I got a new one maybe five months ago. I'm not a
10 computer guy.

11 Q How much time passed between the time that your old
12 computer died. How long? You don't know?

13 A (Nodding).

14 Q Now, do you use any of the other computers in your house?

15 A Yes. Well, I don't use them. Like, if I wanted
16 something from Amazon, I ask my son to order it for me.

17 Q Did you ever use the computer?

18 A To read e-mail once in a while.

19 Q How do you get your e-mail on that computer?

20 A Through Hot Mail. I have a little tablet that I use for
21 that, too, you know.

22 Q So you get your e-mail on the tablet?

23 A Any computer. You just log in to Hot Mail.

24 Q Tell me how you log in?

25 A Hotmail.com I sign in and I put in my password.

J. Salcedo - Direct/Mr. Nelkin

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1 Q You do it on each the computer?

2 A My tablet doesn't need any password because it's
3 automatic. I open the mail and it opens up.

4 Q So your e-mail is on your tablet?

5 A Yes.

6 Q Is that the tablet that you say you use for games?

7 A Yes. Yes. Yes, that one.

8 Q And how long did you have that tablet?

9 A Awhile.

10 Q A year, two years, three years?

11 A Maybe a year, year and a half.

12 Q Did you have it while you were working at Two Rivers?

13 A Yes.

14 Q And the other computer, the one that you just bought, is
15 your e-mail installed on that?

16 A Does it automatically. It's there but I don't use it.

17 Q And on the one you used to have, was it automatic as
18 well?

19 A Yes. Sometimes I forget my password, so I have to ask my
20 sons for it. This is why I have it automatic because I'm not
21 good with that part of the world.

22 Q Where are those passwords recorded? I mean --

23 A They're in the computer automatically. They sign-in
24 automatically.

25 Q Okay. Thank you. But what are you asking your son for

J. Salcedo - Direct/Mr. Nelkin

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1 in connection --

2 A Sometimes I screw up, I forget. Sometimes I can't get
3 in, so I tell him what's the password whatever because it
4 messes up sometimes.

5 Q Do your sons have different passwords than you?

6 A They have their own password, their own e-mail. I don't
7 know.

8 Q But they know your password?

9 A Sure they know everything about me. I got nothing to
10 hide.

11 Q Now, besides the photos of the machines, were there any
12 other types of photos related to Two Rivers that you took?

13 A Not that I recall.

14 Q Did you take any of the work that was being done?

15 A It's a possibility.

16 Q Did you take any pictures of the workers who were working
17 on the job?

18 A Yes. The thing is where do I have them if I have them
19 anymore.

20 Q Did you give those pictures to anyone else?

21 A My lawyer has pictures I think I gave him.

22 Q Besides your lawyer, did you give them to anyone else?

23 A I don't use them. I just use them for my purpose. My
24 recreation. I like pictures.

25 Q When I asked you before if you had the pictures or didn't

J. Salcedo - Direct/Mr. Nelkin

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1 have the pictures, and you said, no, you'd have to go look?

2 A I said maybe I have to look. I don't remember.

3 Q But now you remember you gave them to your lawyer?

4 A You just told me if I gave pictures to somebody else it
5 clicked in.

6 Q Have you done any work for any of the coffee companies in
7 Newark?

8 A I done work after I left Two Rivers.

9 Q After Two Rivers?

10 A Yes. I didn't know that company existed.

11 Q What did you do there?

12 A I helped install a garbage compactor.

13 Q Do they have any of the same machines that Two Rivers
14 has?

15 A I don't know. I just went to do a garbage compactor. I
16 didn't go to the office or anything like that.

17 Q Did you ever work on any coffee machines there?

18 A There is no coffee machines there. I don't know if there
19 are. I don't know.

20 Q And who paid you to?

21 A Through MB Fuel when I used to go there.

22 Q But you told me before if I remember that after you left
23 Two Rivers you didn't work for MB Fuel?

24 A About two months. I never worked. After that, I never
25 worked for MB Fuel, I worked for N&S. I don't know how to

J. Salcedo - Direct/Mr. Nelkin

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1 explain to you.

2 THE COURT: Try to explain it because I'm not
3 getting it.

4 THE WITNESS: Well, the Ahearns, I don't know what
5 relation they have with N&S and MB Fuel. I know MB Fuel
6 because I used to work for MB Fuel. It's more common for me
7 because I used to work for MB Fuel.

8 THE COURT: Do the distinctions matter to you
9 between MB Fuel --

10 THE WITNESS: As long as I get my check on Friday
11 that's all I care. I'm not interested in nothing else, man.

12 Q Do you know the names on the check?

13 A Mine says N&S right now.

14 Q Did you get any other names on your check besides MB Fuel
15 or Two Rivers?

16 A No.

17 Q Now, it's my understanding of your testimony that you
18 left Two Rivers?

19 A Right.

20 Q And you filed for unemployment?

21 A Right.

22 Q Did you receive unemployment?

23 A Yes, I did.

24 Q Now?

25 A I had a hearing on this.

J. Salcedo - Direct/Mr. Nelkin

1138

1 Q You had a hearing. What did you tell them was the reason
2 for --

3 A Same thing I told you before. Mr. Friedman told me to
4 pick up my tools, go to the Bronx, and I thought I was fired.

5 Q You were fired?

6 A That I didn't feel that I was tired.

7 Q Do you get unemployment? Do you know if you get
8 unemployment if you quit?

9 A I don't know that, I have no idea. I never done it
10 before. Anyway, this was the first time I had nothing to do
11 with that.

12 Q At the hearing, did you tell them that you quit or that
13 you were fired?

14 A I told them that I quit most likely. I don't remember.
15 It was awhile from now?

16 Q Who represented the company at that hearing?

17 A I think we did that through the phone.

18 Q Well, was it --

19 A I spoke to a lady, that was it. It was a hearing on the
20 phone. I wasn't in a place like that she called me on the
21 phone. They called me on the own.

22 Q Who was on the phone from Two Rivers?

23 A A lady, I don't know. I didn't speak to anybody from
24 Two Rivers, I spoke to a lady on the phone in Georgia or
25 wherever.

J. Salcedo - Direct/Mr. Nelkin

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1 THE COURT: Ms. Nelkin, I'm trying to listen to the
2 testimony, and while you're whispering it's making it hard for
3 me to hear it.

4 MS. NELKIN: I'm sorry.

5 THE COURT: Please pass notes if you must. The
6 whispering is a little loud, please.

7 Go ahead, sir.

8 A Did I answer your question.

9 Q No.

10 THE COURT: I'm sorry, I didn't hear your answer.

11 THE WITNESS: He asked me who was in the hearing and
12 I said I don't know. They called my on the phone, I spoke to
13 a lady, that was the end of it.

14 THE COURT: Go ahead.

15 Q Was there someone on the phone besides you and the lady?

16 A I have no idea. She hanged up and she got back to me and
17 they give me this number that I used to call once a week to
18 report myself in and that was it. I did it for about three
19 weeks or four weeks that was the end of that, too.

20 Q How long did you get unemployment?

21 A Nor two or three weeks.

22 Q Then what happened?

23 A I dropped it.

24 Q You stopped getting unemployment?

25 A I stopped calling the number and then the checks stopped

J. Salcedo - Direct/Mr. Nelkin

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1 coming.

2 Q Was it difficult for you and your wife to suddenly have
3 that \$80,000 in income stop?

4 A No, I was making good money.

5 Q What did you to do replace the difference?

6 A When I worked for MB Fuel, MB Fuel, I do a lot of side
7 work.

8 Q Who did you do the side work for?

9 A Different customers.

10 Q Just tell me who?

11 A If you call a person, like, you call Jorge, can you do
12 this fix this for me, I will go to your house.

13 THE COURT: He's not asking what the conversation
14 would be like. He's asking who were these other people that
15 you did work for.

16 THE WITNESS: Customers of mines.

17 THE COURT: Who are they? Names because I assume
18 you know who you're working for. If you could tell us the
19 people and the companies.

20 THE WITNESS: No, it's not companies. It's people
21 from the street. People that I met. I tell them I do this,
22 my next-door neighbor.

23 THE COURT: There you go. Start going down that
24 list.

25 THE WITNESS: My next door neighbor house. I do

J. Salcedo - Direct/Mr. Nelkin

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1 across the street from my house.

2 THE COURT: Sir, it's not hard. I take it you know
3 the names of people that you work for.

4 THE WITNESS: Names. Oh, man. Well, my next door,
5 she's Cuban, her name is Maria, she owns the two houses over.
6 I fix her heating one day when they have a problem they call
7 me so side work for me.

8 Q And how much does --

9 A I charge --

10 MR. FINKEL: Objection, your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: I charge her \$120, \$130 for the
13 service call plus parts.

14 Q And how many did you have between the time you started
15 stopped working at Two Rivers and started working at N&S?

16 A How much work that I had? I always had work, plenty of
17 work.

18 Q Five service calls, 50 service calls?

19 A In the winter, you have a lot of them. In the summer, I
20 don't have too much. That's why in the summer I take a month
21 off because there's nothing to do in the middle of June, July,
22 I disappear for a month. I go back home. It's cheaper to go
23 home than stay in New York City.

24 Q How are you paid for these service calls?

25 A I get cash, sometimes check.

J. Salcedo - Direct/Mr. Nelkin

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1 Q And do you know the rough amount that you earned?

2 MR. FINKEL: Objection, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: I don't keep track of that.

5 Q Did you declare that income?

6 MR. FINKEL: Objection, your Honor.

7 THE COURT: Sustained.

8 Q Would there be any records of this work?

9 MR. FINKEL: Objection, your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Not really.

12 Q Would it be reflected on your taxes?

13 MR. FINKEL: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Do I have to answer that?

16 THE COURT: Yes.

17 A Sometimes, it depends. If I get cash, I don't put it on
18 the tax. If I get checks, I have to deposit it so I put it on
19 the taxes.

20 Q Okay. Let me move on to when you were -- when you went
21 to 26 Flavors?

22 A I went to 26 Flavors?

23 Q I think you testified that you went to the coffee
24 companies in Newark to do that?

25 A I don't know that was 26 Flavors.

J. Salcedo - Direct/Mr. Nelkin

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1 Q Who did you think it was?

2 A I thought it was a coffee company.

3 Q Who asked you to go?

4 A Mr. Friedman.

5 Q And who paid you?

6 A MB Fuel.

7 Q So you were working --

8 A Or N&S. I don't know, makes no difference to me.

9 Q But you did that as their employee?

10 A Yeah. Maybe not. Maybe I did it, you know, but I go to
11 them, you know.

12 Q Besides this one service call to the coffee companies
13 that you went through them for, did you go through them for
14 any other service calls?

15 A No, I went to the garbage compactor.

16 THE COURT: Through the --

17 THE WITNESS: Garbage compactor. I went to install
18 it.

19 Q Besides that one Instance, did you have any other work
20 for --

21 A Yes, I did. I went there to put in an electric hi-lo so
22 I went to wire up the electric pour supply to charge the
23 hi-lo.

24 Q Besides that, were you doing other jobs for MB Fuel at
25 this time?

J. Salcedo - Direct/Mr. Nelkin

1144

1 A Like I said before, I do work. I'm an employee, I do
2 whatever they say. Whoever cuts me a check on Friday that's
3 what I try to do.

4 Q Before the five or six months ago that you started
5 working for N&S, did you do any work for them, for MB Fuel, as
6 an employee before that?

7 A I don't know how to answer that question.

8 THE COURT: I'm sorry.

9 THE WITNESS: I don't know how to answer that
10 question.

11 THE COURT: He asked the question, you give the
12 facts that are responsive.

13 THE WITNESS: Like, you know, I had a window in
14 between that I wasn't working. Two months, I think it was,
15 you know. And even though I had work sometimes, I called,
16 listen, I got to stop and I'm going to this place because I
17 was using their vehicle. So I had to inform them what I was
18 doing, that he's used to pay me for the call. Not it's an
19 employee but they pay me.

20 Q How did this pay you?

21 A They gave me a check and sometimes they would give me
22 cash the Ahearns give me \$200, \$300, it depends on what I did
23 because I was using his vehicle to transport myself and the
24 equipment to wherever I go. I don't have a working truck. I
25 don't have a van.

J. Salcedo - Direct/Mr. Nelkin

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1 Q So the Ahearns sometimes paid you in cash?

2 A Inside those two months, once in a while sure.

3 Q Did Mr. Friedman ever pay you in cash for anything?

4 A I never worked directly to Mr. Friedman. He calls
5 MB Fuel or I never got nothing.

6 Q Do you know if he has any role at MB Fuel?

7 A I see that he has an office there. I see him there once
8 in a blue moon and that's all I know about Mr. Friedman.

9 Q Okay. Have you ever done work for Mr. Birnbaum?

10 A I don't know who he is.

11 Q Have you done anything else for any of the coffee
12 companies besides those two visits?

13 A No, not that I recall.

14 Q Do you remember when you went to Sonya's office to remove
15 the boxes. Were the boxes in the office?

16 A I think so. I think they were on the floor in the
17 office, yeah.

18 Q Okay. Do you remember how many desks were in the office?

19 A Two desks.

20 Q Okay. And do you remember which one was Ms. Rivera's?

21 A I will make a picture of it. This is Rivera's desk and
22 this was her assistant's desk and they were in this position.

23 Q Where would the door be?

24 A The door would be on this side right there.

25 Q Okay. So --

J. Salcedo - Direct/Mr. Nelkin

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1 A She would be in the windows and the other table would be
2 like this, like an L shape.

3 Q Okay. Do you remember how many computers were on the
4 desks?

5 A No.

6 Q Were there any computers on the desks?

7 A I just picked up the boxes, you know? Like I said
8 before, I'm not a --

9 Q And where were you mingling with Ms. Rivera?

10 A In the hallway as, you know, it's a long hallway.

11 Q Did Ms. Rivera ever tell you anything about why she
12 needed the boxes removed?

13 MR. FINKEL: Objection. Hearsay.

14 THE COURT: He hasn't asked for the contents, so
15 overruled. We have the declarant on the stand and is
16 available, so I will overrule the content as well.

17 THE WITNESS: Answer the question?

18 THE COURT: Answer, please.

19 THE WITNESS: What was your question again.

20 Q Did Ms. Rivera ever tell you anything about why she
21 needed the boxes moved?

22 A I knew she was leaving Two Rivers Coffee.

23 Q So she told you she was leaving Two Rivers Coffee?

24 A Yes.

25 Q Did she tell you where she was going?

J. Salcedo - Direct/Mr. Nelkin

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1 A I knew she was going to the Bronx.

2 Q Did you wonder why she didn't need her computer?

3 MR. FINKEL: Objection.

4 THE COURT: Overruled.

5 THE WITNESS: We didn't have no conversation about
6 her computer that I could remember. Nice day, raining, just
7 carry the boxes out, et cetera, et cetera. That's the type of
8 conversation that we had. I don't talk about no work. She
9 doesn't talk to about me no work. I'm not interested in that
10 stuff, man.

11 Q Why did Ms. Rivera need your help?

12 A They were heavy boxes, I guess. You know?

13 Q Did you carry them?

14 A She was a little lady. She's nice, you know?

15 Q How did you transport the boxes?

16 A In the van.

17 Q Did you use a hand cart, did you carry them one by one?

18 A I think we carried them one by one or two at a time. I
19 don't remember.

20 Q And do you remember how many trips you made?

21 A No. A couple of trips. Three or four. Maybe two. I
22 don't know.

23 Q So you could have had four boxes, eight boxes?

24 A It's possible, four.

25 Q I'd like to ask you which of the defendants you know and

J. Salcedo - Direct/Mr. Nelkin

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1 how long you've known them.

2 How long have you known Mr. Friedman?

3 A 20 years maybe in that neighborhood.

4 Q When did you first meet him?

5 A We met at Zerega Avenue in the oil terminal. A terminal
6 of oil where they sell oil wholesale.

7 Q In Zerega?

8 A Zerega Avenue.

9 Q What was he doing there?

10 A I guess he was there. I don't know what he was doing
11 there.

12 Q Was it his place of business?

13 A I have no idea if it was his place. I was there with the
14 Ahearns.

15 Q And do you remember why you met Mr. Friedman?

16 A They introduced him to me.

17 Q What were you doing there?

18 A Maintaining the place like I did in Two Rivers. Mechanic
19 work, you know, whatever had to be done.

20 Q And you have no recollection as to whether he was just
21 walking by or part of the business you were helping to
22 maintain?

23 A I don't think he was part of the business, but he was
24 there. Like I said, I don't.

25 Q When did you first meet Jack Ahern?

J. Salcedo - Direct/Mr. Nelkin

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1 A 30 years ago maybe. Him and his brother I start working
2 for them as truck mechanic.

3 Q Truck mechanic?

4 A Yes. I was very good at that.

5 Q But yet, you don't like doing that?

6 A It's too dirty, too greasy. I wear gloves when I work,
7 you know.

8 Q When did you meet Ms. Rivera?

9 A I met Ms. Rivera maybe 15 years ago, 20 years ago.

10 Q When did you first meet her?

11 A 15, 20 years ago.

12 Q No, not why. How did you first meet her, I'm sorry.

13 A I think they bought an oil company. She came with the
14 company, like, you know.

15 Q Who bought the oil company.

16 A I don't know. The Ahearns, I guess, you know.

17 Q And so, she just suddenly showed up at 431?

18 A She was working at that company. I think they kept her
19 working, you know.

20 Q Do you remember --

21 A To change the help.

22 Q Do you remember when Mr. Friedman first came to 431?

23 A Not really.

24 Q Do you know when -- does 431 have more than one address?

25 A It has two addresses, it's a one block. It goes from one

J. Salcedo - Direct/Mr. Nelkin

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1 block to another. This is 163rd and this is 164th. And you
2 can go right through the building to the other side to the
3 other block.

4 Q And do you know if some companies use one address and
5 others use the other?

6 A I have no idea of it.

7 Q When did you first meet Ms. Ezell?

8 A I working a long time ago, too. 20 years ago.

9 Q Do you remember Ms. Ezell was arrested?

10 MR. FINKEL: Objection.

11 THE COURT: Sustained.

12 Move on.

13 Q Do you know Richard Spence?

14 MR. FINKEL: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: Answer that?

17 THE COURT: If I say "overruled," please answer.

18 A Yes, I met him, sure.

19 Q How did you meet him?

20 A Used to be in that building, 160 -- 431.

21 Q What did he do there?

22 A I know he was the manager or the boss. I don't know. He
23 used to give orders.

24 Q Give orders?

25 A You know --

J. Salcedo - Direct/Mr. Nelkin

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1 Q For what?

2 A Fix things.

3 Q Did he give you orders?

4 A Yeah.

5 Q Did you work for him?

6 A I worked for the Ahearns. Just like I worked at
7 Two Rivers. I worked for Eugene, I worked for his son here
8 and I worked for Friedman.

9 Q Did the Ahearns work for Mr. Spence?

10 A I don't know.

11 Q But Mr. Spence had the ability to tell what you to do?

12 A Sure. Anybody tells you what to do in that place,
13 there's no bosses there. The place runs by itself, actually.
14 Everybody is a boss there.

15 Q I don't understand that.

16 A Well, you know, if John tells you, let's pick up the
17 garbage, let's go pick up the garbage. If I tell you, let's
18 go paint the wall, let's go paint the wall. It's not much of
19 anything, you know.

20 Q Could the guy at H&A Pump tell you what to do?

21 A No, they rent that place. We're trends.

22 Q Could the guy at Pronto tell what you to do?

23 THE COURT: Move along, please. We're not going to
24 spend the entire week chasing down every permutation of every
25 conceivable question. You're going to be finished in the next

J. Salcedo - Direct/Mr. Nelkin

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1 few minutes?

2 MR. NELKIN: I have one or two questions left.

3 Q Did Ms. Ezell work for Mr. Spence?

4 MR. FINKEL: Objection.

5 THE WITNESS: I have no idea.

6 THE COURT: Overruled.

7 Q Did Mr. Spence tell her what to do?

8 A They were office people, I'm not an office guy. I don't
9 know. The office was upstairs on the second floor. I'm on
10 the first floor. I don't know.

11 Q One last question. Do you know if Mr. Spence had any
12 involvement with MB Fuel?

13 A I can't say yes or no. I don't know. Like I told you,
14 he used to tell me things to do. Things got done.

15 Q What about Associated Fuel?

16 A I have no idea.

17 Q At your new place, is Mr. Cirillo involved?

18 A What's the new place.

19 Q N&S?

20 A I don't know who is Mr. Cirillo. Yesterday, I find out
21 that N&S they were saying that Ahearns own N&S. I don't know
22 anything about that. Like I said, I'm just employee, man.

23 Q Who gives you your check there?

24 MR. FINKEL: Objection.

25 THE COURT: Overruled.

J. Salcedo - Direct/Mr. Nelkin

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1 THE WITNESS: It goes automatically to my checking
2 account.

3 Q Goes automatically?

4 A Yes.

5 Q And is that a new -- did any other checks you ever got go
6 into your checking account?

7 A This is new for me.

8 Q New for you?

9 A It's very convenience.

10 Q Do you know if Ms. Ezell is involved in any way with N&S?

11 A I have no idea.

12 Q Or Ms. Rivera?

13 A I don't know.

14 Q Or Mr. Friedman?

15 A No, because the company is in Hawthorne. It's about an
16 hour away from where these people are in the Bronx.

17 MR. NELKIN: I don't think I have any more
18 questions, your Honor.

19 THE COURT: Mr. Finkel?

20 MR. FINKEL: Yes.

21 (Continued on the next page.)
22
23
24
25

1 CROSS-EXAMINATION

2 BY MR. FINKEL:

3 Q Good afternoon, Mr. Salcedo. Would it be fair to say
4 that you are an all-around fix-it type guy?

5 A Yes, it is.

6 Q And wherever you worked, you did whatever was necessary
7 to fulfill the requirements of your boss?

8 A Try my best.

9 Q Okay. So you start off fixing cars and trucks and then
10 later machinery; is that correct?

11 A Yes, make more money, machinery, for sure.

12 Q I would like to direct your attention to a day that
13 Mr. Nelkin asked you a number of questions about, the day that
14 you had an argument with Mr. Schreiber. Was that the first
15 time you ever had an argument with Mr. Eugene Schreiber?

16 A No.

17 Q Okay. Do you know whether Sylvia Rivera also had
18 arguments with Mr. Schreiber?

19 A Sonia?

20 Q I'm sorry. Do you know whether Sonia had arguments with
21 Mr. Schreiber?

22 A No.

23 Q You are right; I apologize.

24 A No, I don't.

25 Q Okay. Now, the day that you had this argument with

J. Salcedo - Cross/Mr. Finke1

1155

1 Mr. Schreiber, is it fair to say right after that you called
2 Mr. Friedman?

3 A Yes, I did.

4 Q And what, if anything, did Mr. Friedman tell you to do?

5 A Pick up my tools and go to the Bronx office.

6 Q Okay. And did you pick up your tools?

7 A Yes, I did.

8 Q Okay. And after you picked up your tools, where did you
9 put them?

10 A My van.

11 Q Okay. And after that, did there come a time that same
12 day that you turned in your key cards?

13 A Yes, two.

14 Q How many key cards did you have?

15 A I had two.

16 Q Why did you have two?

17 A One for me and one for the, like, an electrician came or
18 a plumber came or somebody came, I lend them my card and we go
19 back and forth out the building to do construction, whatever
20 you got to do, so I don't have to be chasing them around.

21 Q And you were issued that second card to give to
22 contractors?

23 A That was the purpose of that.

24 Q Okay. And when approximately, if you can recall, what
25 time that day did you turn in those two key cards?

J. Salcedo - Cross/Mr. Finke1

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1 A During the course of the day. You know, I had a lot of
2 stuff there. Took me a while to, you know, pick up all my
3 stuff.

4 Q Well, was it before lunch or after lunch?

5 A Probably after lunch.

6 Q Was it after sundown or before sundown?

7 A No, before.

8 Q And so it was still daylight out?

9 A Yes, yes.

10 Q Okay. And was that the same day that you assisted
11 Ms. Rivera in taking boxes out of the premises?

12 A It could have been or could have been the next day; I'm
13 not sure.

14 Q Okay. And do you know why Ms. Rivera was moving from
15 New Jersey back to the Bronx?

16 A I heard rumors that she didn't -- Schreiber here
17 (indicating), he keep bugging, you know, and having arguments
18 in her had office, you know.

19 Q Okay. And so you put her boxes, the boxes from her
20 office into your van?

21 A Right.

22 Q And the boxes were already packed in her office; is that
23 correct?

24 A Right.

25 Q And you took the boxes to the Bronx?

J. Salcedo - Cross/Mr. Finke1

1157

1 A Yes, sir.

2 Q And you put the boxes in an office in the Bronx where she
3 was going to work?

4 A Right.

5 Q Okay. And subsequent to that day, you returned at
6 Mr. Friedman's request to take out an oxygen tank; is that
7 correct?

8 A That's correct.

9 Q Did you -- how did you gain access to the building?

10 A I called Javier Espinal which he still worked there. He
11 opened the door and let me in.

12 Q Did there ever come a time that you forced your way into
13 the premises of Two Rivers in New Jersey?

14 A No, sir.

15 Q Okay. And when you -- on the time that you came back
16 with Sonia Rivera, do you specifically recall how you gained
17 entry into the building?

18 A It could have been my key or could have been her key.

19 Q Okay.

20 A We had a key.

21 Q Okay. So in addition to the two key cards, there was
22 another key?

23 A Sure. You have to open the first door with a key, and
24 the they could door is the one that opens up with a card or a
25 key.

J. Salcedo - Cross/Mr. Finke1

1158

1 Q Okay. So you would have first opened the first door with
2 a regular old-fashioned metal key?

3 A Right.

4 Q And that could have been Sonia's or yours?

5 A Right.

6 Q And then you had to get through the electronic door?

7 A Correct.

8 Q At that point, with Sonia, you didn't have a passkey
9 anymore because you had turned it in; is that correct?

10 A Right.

11 Q So then how did you get past the second door?

12 A We probably had a key, the key.

13 Q Sonia's key?

14 A Her or mine's.

15 Q Well, you turned in your passkey already?

16 A Well, we had a metal key.

17 Q Okay. There are two doors, correct?

18 A Right. Both work with keys, too.

19 Q Okay, fine, okay. Now, there was some discussion about
20 the word "tampering," okay. Did there ever come a time that
21 you intentionally tried to disable or break any equipment at
22 Two Rivers?

23 A No, I haven't.

24 Q Did you know that that is what "tampering" means?

25 A No. I thought tampering is like messing something up, I

J. Salcedo - Cross/Mr. Finke1

1159

1 guess, yeah, what you say.

2 Q Well, did you ever intentionally mess up something?

3 A No.

4 Q Okay. And when you -- you came back to take your Allen
5 wrenches, when did that happen? Was that the same day you
6 took all your other tools?

7 A No, I returned that key when I went to Sonia, to pick up
8 her files.

9 Q Okay. And your Allen wrenches, they were located inside
10 a piece of equipment?

11 A Inside a machine which is the second box.

12 Q And when you took your Allen wrenches, did you do
13 anything else to that equipment except take the Allen wrench?

14 A Just take my Allen keys.

15 Q You had fixed and repaired and adjusted those machines;
16 is that correct?

17 A That's correct.

18 Q How many machines did you fix and repair during the time
19 you were in Two Rivers?

20 A There are about nine machines. Every day I was on top of
21 them.

22 Q And okay. Now, did there come a time that you provided
23 services for Two Rivers when they were building the interior
24 of the building in South Plainfield?

25 A Sure. I build that.

J. Salcedo - Cross/Mr. Finke1

1160

1 Q I'm sorry?

2 A I worked on that and I helped to build it.

3 Q Okay. And during that time, you were not employed
4 full-time by Two Rivers, were you?

5 A No, I wasn't.

6 Q Who were you employed by during that time?

7 A MB.

8 Q Okay. And during that time, would you say that was in
9 2013?

10 A Probably.

11 Q Okay. And so in 2013 once the build-out of the premises
12 was underway and taking shape, did there transfer come a time
13 that same year that you became a full-time employee of Two
14 Rivers?

15 A Yes.

16 Q And when you were doing the build-out before you became a
17 full-time employee of Two Rivers, who paid you?

18 A MB.

19 Q Okay. And during that time, did you take any photographs
20 with your -- with your -- well, withdrawn.

21 During that time, did you have an iPhone?

22 A Yes, I did.

23 Q And did you take photographs during that build-out with
24 your iPhone?

25 A I took a few photos.

J. Salcedo - Cross/Mr. Finkel

1161

1 Q And do you know where those photographs are now?

2 A It's such a long time, I don't know.

3 Q Well, I am going to ask you to think, did you ever turn
4 those photographs into me, your lawyer?

5 A Yes, I gave you photos.

6 Q And why did you do that?

7 A You asked me for them.

8 Q I see, okay. I would ask you to direct your attention to
9 Exhibit --

10 THE COURT: Sorry, Mr. Finkel, I am just trying to
11 keep track of the various things in dispute. These are
12 photographs he has turned over?

13 MR. FINKEL: No, we have not turned them over.
14 That's part of discovery, Your Honor.

15 THE COURT: Okay.

16 MR. FINKEL: They were --

17 THE COURT: Okay, go on.

18 MR. FINKEL: Plaintiff is aware that we have them
19 because we disclosed them.

20 THE COURT: No, obviously. I just wondered if there
21 was a dispute before we now. Go ahead.

22 BY MR. FINKEL:

23 Q I direct your attention to Exhibit 33. Have you taken a
24 look at that?

25 A (Perusing.) Right.

J. Salcedo - Cross/Mr. Finke1

1162

1 Q Okay. You were asked some questions about that
2 previously; is that correct?

3 A Yes.

4 Q Now, look at the words in this communication where it
5 says, "Tell Mr. Friedman tomorrow morning," et cetera, et
6 cetera, et cetera. Do you see those?

7 A Yeah.

8 Q Did you type those words into any device?

9 A No.

10 Q How did those words, therefore, appear?

11 A I speak to the phone and it types it.

12 Q And when you are speaking into that phone at that time,
13 were you using a Brooklyn Beans account?

14 A I don't think so. You know, I'm not happy with that
15 Brooklyn sign there.

16 Q And would you characterize this as an e-mail or as a text
17 message or something else?

18 A It might be text; I don't know. Makes no difference to
19 me as long as I get --

20 Q So do you know whether this is an e-mail or a text
21 message or not?

22 A I guess it's an e-mail because the address up there.
23 It's an e-mail address up there. But like I said, I don't
24 know if, you know --

25 Q So you don't know?

J. Salcedo - Cross/Mr. Schafhauser

1163

1 A No, it could be either one.

2 Q Okay. I direct your attention to the next exhibit,
3 Exhibit 34. In the middle of the page, there's additional --
4 further communication. It says, "The container was unloaded
5 today," et cetera. Do you see that entry?

6 A Yes.

7 Q Did you type that in?

8 A No.

9 Q Then how did that communication occur?

10 A I -- I pressed my mic on the thing and it types it in for
11 me.

12 MR. FINKEL: I have no further questions, Your
13 Honor.

14 THE COURT: Okay, anyone else? Mr. Schafhauser?

15 MR. SCHAFHAUSER: Yes, thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SCHAFHAUSER:

18 Q Mr. Salcedo, when you worked for Two Rivers, did you use
19 a computer that was located in the South Plainfield office?

20 A Yes.

21 Q Okay. Could you please tell me what computer you used in
22 the South Plainfield.

23 A Well, it's a computer that was in the service room
24 office, in the service room. We had a desk there with a
25 computer on top of it.

J. Salcedo - Cross/Mr. Schafhauser

1164

1 Q And what was on that computer?

2 A Nothing, you know, the Internet.

3 Q It had access to the Internet?

4 A Yeah, that's all we had.

5 Q Did it have any other programs on it that you call?

6 A No.

7 Q Was that computer accessible to other people?

8 A Anybody that walked into that office could use that
9 computer.

10 Q There was no password?

11 A No password, nothing.

12 Q And did you, in fact, use that computer?

13 A Yes, I did.

14 Q How often did you use that computer?

15 A When I had nothing to do, I sat there and I probably
16 looked at the Internet, Google, you know, looked at other
17 machines, you know.

18 Q Very well. And when did you last -- withdrawn. I
19 remember your testimony about dates, so I will withdraw the
20 question.

21 Let me ask it this way. Whenever it was that you
22 last worked at Two Rivers, did that computer remain in the
23 South Plainfield location?

24 A It was there when I left.

25 Q You haven't used that computer since then, right?

J. Salcedo - Cross/Mr. Schafhauser

1165

1 A It still there.

2 Q How long has it been since you have been back to South
3 Plainfield?

4 A I haven't been back.

5 Q Now, did you ever take a computer that was located in
6 South Plainfield in the Two Rivers facility and remove it from
7 there to somewhere else?

8 A No.

9 Q You never did?

10 A No.

11 Q You mentioned, or actually I think Mr. Nelkin had asked
12 you about a different computer, and it was an Apple computer
13 that you were referring to. And my notes say you said it
14 doesn't work?

15 A No, it doesn't work.

16 Q Well, well, how do you know it doesn't work?

17 A You plug it in, nothing happens. You know, I took it
18 apart, you know. Whatever is home is home, you know.

19 THE COURT: I'm sorry. You took it apart
20 physically?

21 THE WITNESS: Yeah. I was trying to fix it.

22 THE COURT: You opened it up? Did you remove the
23 hard drive?

24 THE WITNESS: I removed everything out of it.

25 THE COURT: What did you do with the hard drive?

J. Salcedo - Cross/Mr. Schafhauser

1166

1 THE WITNESS: Probably threw everything out. I
2 probably threw everything out; I don't know. It's probably
3 home somewhere.

4 BY MR. SCHAFHAUSER:

5 Q Let me see if I get this straight. When you say you
6 threw it out, you took the computer apart?

7 A Right.

8 Q And the computer, are the parts to the computer still
9 with you somewhere in your home?

10 A Probably.

11 Q They are probably still there?

12 A Yeah.

13 Q So now I'm confused. You did not dispose of the parts in
14 the garbage, correct?

15 A No, no, no, no.

16 Q When you say you took it apart and you threw it out, the
17 parts to the computer even if they are not integrated are
18 still located physically somewhere in your house, right?

19 A Most likely.

20 Q And where in the house are they?

21 A I have to look for them. I have no idea.

22 Q Okay. But let's go back to why you took it apart. Why
23 did you take the computer apart?

24 A The thing doesn't work.

25 Q It doesn't work? And at some point, did you try to

J. Salcedo - Cross/Mr. Schafhauser

1167

1 reassemble the computer?

2 A I lost a couple of screws, odds and ends.

3 THE COURT: Can I just, it's so hard to understand
4 this testimony. Were you trying to fix it?

5 THE WITNESS: Yeah, see if I could have fixed it.

6 THE COURT: Do you have any reason to think --

7 THE WITNESS: I'm a very curious person.

8 THE COURT: You are a curious person so you took
9 apart the computer?

10 THE WITNESS: Yeah. I don't know anything about
11 computers, but you know.

12 THE COURT: Okay. But you didn't have any training
13 to fix the computer?

14 THE WITNESS: No, I didn't know knowing.

15 THE COURT: Go ahead, sir.

16 BY MR. SCHAFHAUSER:

17 Q Let me see if I understand. Were you able to fix the
18 computer?

19 A No.

20 Q You were unable to fix the computer?

21 A Correct.

22 Q To this day, as best as you know, the computer does not
23 work?

24 A Doesn't work.

25 Q And when did you last use the computer, how long ago?

J. Salcedo - Cross/Mr. Schafhauser

1168

1 A What was the question again?

2 Q Let me try again. I know dates are an issue, but is it a
3 period of months, years that you used -- how long ago did you
4 use the computer? I'm sorry. Let me try again.

5 How long ago was it, to the best of your
6 recollection, that you were actually able to do anything on
7 the computer?

8 A On that particular computer?

9 Q Yes.

10 A I haven't done anything. It's broken.

11 Q Okay. And how long has it been broken?

12 A A long time.

13 Q And how long is a long time ago?

14 A A year, two years; I don't remember.

15 Q You are not able to say?

16 A No. Buy a computer for \$200, \$100 at microcenter [sic].

17 Q Now, you talked about -- testified about oxygen tanks. I
18 think you said Mr. Friedman told you to take oxygen tanks out
19 from Two Rivers?

20 A One tank.

21 Q One tank?

22 A That's what it is.

23 Q And what was your understanding as to who owned that
24 tank?

25 A Nobody owns it. It's a rented tank.

J. Salcedo - Cross/Mr. Schafhauser

1169

1 Q It's a rented tank?

2 A Yes.

3 Q So when you took that tank, where did that tank go?

4 A Went back to the place I picked it up, the place that
5 sold, George's welding supply store.

6 Q The welding supply store?

7 A Correct.

8 Q So, so the tank so far as you understood belonged to the
9 welding supply store?

10 A That's correct.

11 Q That's where it was rented from?

12 A Right.

13 Q And they took the tank back?

14 A Gave me a receipt.

15 Q They gave you a receipt for the tank?

16 A Right. They received it.

17 Q Was the tank full or empty?

18 A I couldn't tell. I think it had a little bit in it, but
19 normally you have to put gauges to know how much gas is in
20 there. But, you know, you take -- the gauges don't go with
21 the tank. You know, you return the tank, you take the gauges
22 out, you put a cap and return it or you store them without
23 gauges. You know, you never keep the gauges on them since
24 it's dangerous.

25 Q Very well. You were asked about the amount of money that

J. Salcedo - Cross/Mr. Schafhauser

1170

1 you earned at Two Rivers. Did you ever receive overtime?

2 A No.

3 Q You were -- you testified that Mr. Friedman told you to
4 go to the Bronx office whenever it was that you had this issue
5 with Mr. Eugene Schreiber, right, approximately that time? Do
6 you remember the testimony?

7 A I remember the what?

8 Q Let me try again.

9 THE COURT: Why don't just ask the question.

10 MR. SCHAFHAUSER: Yes, yes. Thank you.

11 Q Did -- when you last worked for Two Rivers, was it
12 Mr. Friedman who told you to take your things and go to the
13 Bronx office?

14 A Yes.

15 Q Okay. And did you do so?

16 A Yes, I did.

17 Q And did you go to the scene Bronx office the same day or
18 some other day?

19 A Could have been the next day.

20 Q Okay. And when you got to the Bronx office, what did you
21 do?

22 A Nothing. I spoke to Sonia, I guess, whatever was there
23 and, you know, had a conversation, had coffee, you know,
24 whatever.

25 Q Did you speak with Mr. Friedman?

J. Salcedo - Cross/Mr. Schafhauser

1171

1 A I don't remember if he was there that day or the next
2 day.

3 Q Did you bring anything with you when you returned to the
4 Bronx office?

5 A When I left?

6 Q Yes.

7 A No.

8 Q No? Okay. So I think we also heard about an Allen
9 wrench, if I got it right, right?

10 A Yeah, Allen key wrench.

11 Q You didn't bring that Allen wrench to the Bronx, did you?

12 A No, it was in my truck.

13 Q That was in your truck?

14 A Yes, tools.

15 Q And your testimony is that belonged to you, not to
16 Mr. Friedman?

17 A But the tools, the tools belonged to me. The vehicle
18 belongs to MB Fuel or N&S, whoever.

19 Q Now, other than the Allen wrench, did you remove any
20 other tools from the South Plainfield facility used by Two
21 Rivers?

22 A My personal tools?

23 Q Your personal tools.

24 A Yes.

25 Q What other tools?

J. Salcedo - Cross/Mr. Schafhauser

1172

1 A Which other tools?

2 Q Right.

3 A Nothing else, my personal stuff.

4 Q Nothing else? Okay. Now, other than your personal
5 tools, did you remove anything, whether a tool, an instrument
6 of some sort, some kind of computer device, did you remove
7 anything else from the South Plainfield facility except for
8 the boxes we heard about you helped Ms. Rivera? Other than
9 that, did you remove anything?

10 A No. Those are mine's.

11 THE COURT: What was the last thing?

12 THE WITNESS: It was mine's.

13 THE COURT: It was yours?

14 THE WITNESS: Yeah, nothing else.

15 Q Now, are you aware of any video recording devices at the
16 South Plainfield facility?

17 A There were cameras everywhere.

18 Q There were cameras everywhere?

19 A Everywhere.

20 Q How do you know that?

21 A You see them in the walls and I had a monitor in my
22 office or the service room that includes monitor the camera
23 were there (indicating).

24 Q Did you ever do -- did you ever have access to either the
25 cameras or whatever location it was that recorded the videos?

J. Salcedo - Cross/Mr. Schafhauser

1173

1 Do you understand? I see a quizzical look. Let me try again.

2 Did you ever control the cameras that took the
3 videos?

4 A No.

5 Q Let me try another question, then. Did you ever touch or
6 change or delete any videos that were in that facility?

7 A No.

8 Q Did you -- do you know who had the control of those
9 cameras?

10 A The Schreibers (indicating).

11 Q And how do you know that?

12 A Well, because one day I saw one of the employees going
13 out with a silver tray, run upstairs to the office and I told
14 him to go, take the tape and rewind the video so you could the
15 see. And they told me his father gave him the tray, silver
16 tray to carry stuff, plates, silver tray.

17 Q You have to be more specific. "His father," who are you
18 referring to?

19 A Eugene.

20 Q And so what happened? Did you -- was that tape rewound?

21 A Yeah, they did it. I don't know how.

22 Q They who do it?

23 A The camera guys were there that day.

24 Q The camera guy?

25 A Yeah.

J. Salcedo - Cross/Mr. Schafhauser

1174

1 Q Did you rewind it?

2 A No.

3 Q Did you know how to rewind it?

4 A I'm not too good with that.

5 Q Okay.

6 THE COURT: Just so I understand, so where are the
7 cameras?

8 THE WITNESS: Well, all over the building there's
9 cameras, even in the entrance, everywhere.

10 THE COURT: And where do you go to rewind it?

11 THE WITNESS: Upstairs in the office.

12 THE COURT: Which office?

13 THE WITNESS: Two Rivers office on the second floor.

14 THE COURT: This is the taping machine?

15 THE WITNESS: Right, right.

16 THE COURT: Where is that within the office?

17 THE WITNESS: Well, you go up the elevator. The
18 office for the reception is there. Then you open the door and
19 there's a kitchen here and the things, that room is left-hand
20 side.

21 THE COURT: Okay.

22 BY MR. SCHAFHAUSER:

23 Q So just so I'm clear, you never rewound the camera,
24 correct.

25 A Right.

J. Salcedo - Cross/Mr. Bergson

1175

1 Q You never deleted the videos in the cameras, right?

2 A Right.

3 Q You never modified what's on the video in the camera,
4 correct?

5 A Correct.

6 Q You wouldn't even know how to do that, correct?

7 A No, I won't.

8 MR. SCHAFHAUSER: I don't have anything further,
9 Your Honor.

10 THE COURT: Anyone else?

11 MR. BERGSON: Your Honor, a couple of questions.

12 CROSS-EXAMINATION

13 BY MR. BERGSON:

14 Q Good afternoon, Mr. Salcedo. You had testified in
15 response to a question by Mr. Nelkin that you had gone to an
16 office in Newark to install a trash compactor. Do you recall
17 that?

18 A Yes.

19 Q Do you recall the address of that office?

20 A I had to put it in my GPS to get there. I don't know the
21 address physically.

22 Q Do you recall the street?

23 A I take Route 21 to 22 together. Newark, I think it is.

24 Q You also recall your testimony that you had installed on
25 a separate occasion an electric Hi-Lo?

J. Salcedo - Cross/Mr. Feldman

1176

1 A Charger for the Hi-Lo.

2 Q What's a Hi-Lo?

3 A A Hi-Lo is a thing like a little cart with a fork in
4 front of it that carries up pallets with boxes, move boxes
5 around.

6 Q So it's a piece of machinery, correct?

7 A Yeah.

8 Q Okay. And you also testified that those are the only two
9 times you ever visited that facility, correct?

10 A That I can recall, yes.

11 Q Okay. Were you ever an employee of a company called
12 26 Flavors LLC?

13 A Never.

14 Q Were you ever an employee of a company called Office
15 Coffee Services, LLC?

16 A No.

17 Q You never received checks from either company?

18 A No.

19 Q You never received cash from anyone at either company?

20 A No.

21 MR. BERGSON: No further questions, Your Honor.

22 MR. FELDMAN: May I?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. FELDMAN:

J. Salcedo - Cross/Mr. Feldman

1177

1 Q In response to some questions from Mr. Nelkin, you
2 testified to there being a build-out at the South Plainfield
3 facility. Do you remember?

4 A What was that again?

5 Q A build-out.

6 A A build-out, to build the building?

7 Q Yes, that there was construction.

8 A Yeah, yeah, yeah.

9 Q What did it look like before the build-out?

10 A Four empty walls, nothing, four empty walls.

11 Q And this was, how large a facility is this?

12 A Like the size of a 100 ball, that neighborhood.

13 Q And were you involved from the build-out from start to
14 finish?

15 A Yes, I was.

16 Q How many other people worked with you on this build-out?

17 A Ten, twenty, you know.

18 Q Over what period of time, if you recall -- I understand
19 you have problems with dates -- did this build-occur? Was it
20 days, weeks, months?

21 A Maybe a year, a long time.

22 Q And did the members of Two Rivers, Mr. Friedman or the
23 Schreibers, did you observe them visiting the location during
24 the build-out?

25 A Never saw him. Never seen his son over there, but

J. Salcedo - Redirect/Mr. Nelkin

1178

1 Eugene, I saw him a few times there and Mr. Friedman a lot
2 there.

3 Q Okay. So you saw Eugene Schreiber there on occasion?

4 A Right.

5 Q Was he there while the work was ongoing?

6 A When it was going.

7 Q Did you observe him communicating with some of the
8 workers who were doing the work?

9 A No, he jokes around in Spanish. He speaks Spanish a
10 little bit.

11 Q Were the people who were working there, to your
12 knowledge, were they employees of Two Rivers?

13 A I have no idea.

14 Q And the materials for the build-out, do you know who
15 bought those?

16 A We used to order them out of the electric supply store.

17 MR. FELDMAN: I have nothing further, Your Honor.

18 THE COURT: Anyone else? Okay. How much redirect,
19 if any?

20 MR. NELKIN: Very short.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MR. NELKIN:

24 Q Mr. Salcedo, you mentioned that there was a monitor in
25 your office for the security cameras. Do you know if your

J. Salcedo - Redirect/Mr. Nelkin

1179

1 computer had access to those security cameras?

2 A No, didn't have access. It was only Internet.

3 Q And do you know if the cameras could be turned by
4 computer or not? Can the cameras be redirected
5 electronically?

6 A Yeah, two of them only.

7 Q How do you know that?

8 A Because from the monitor, you see them move.

9 Q The monitors shows you --

10 A Yeah, you put a little thing here like a little keypad
11 that you can move those two cameras to the direction, only two
12 of them are moveable.

13 Q Next to the monitor?

14 A Right.

15 Q In your office?

16 A Right. Only two, only two of them, one inside, one
17 outside. The inside didn't work that well, either.

18 Q So then you could have moved the cameras?

19 A I could have moved the outside camera, sure, to see, you
20 know, somebody walking or something.

21 Q So if the cameras were turned in such a way that they
22 didn't --

23 A No, couldn't turn them in such a way. They only turned
24 so much. You only see something.

25 Q You said you had an argument with Mr. Schreiber, Eugene

J. Salcedo - Redirect/Mr. Nelkin

1180

1 Schreiber. What was that argument about?

2 A I don't know. Well, he came in arguing with me. I was
3 working on that particular machine, the top of the machine.

4 Q You said you had an argument. You don't know what the
5 argument was?

6 MR. FINKEL: Objection as to --

7 A He came --

8 THE COURT: Stop. Everybody stop.

9 A He came to me. I was walking in the hallway. He came to
10 me, my face started screaming in my face that my desk here
11 were numbers. And when he started with that attitude, I
12 called Mr. Friedman and I told him what was going on. And he
13 told me pick up my tools and come to the Bronx. That was it.
14 I did not argue with Eugene or anything. He just came in. He
15 must have had a bad day or something in the morning it sounds
16 or something, he had to let out steam or something; I don't
17 know.

18 Q You mentioned that you got a receipt for those cylinders?

19 A For one cylinder.

20 Q But you got a receipt?

21 A Yeah.

22 Q Do you know where that receipt?

23 A I handed that over to Mr. Emil Friedman.

24 Q So if Two Rivers is still being charged for cylinders,
25 they could ask Mr. Friedman for that receipt?

J. Salcedo - Redirect/Mr. Nelkin

1181

1 A Sure, we were being charged. That was --

2 Q But if --

3 A It's a receipt that I received the equipment, so that was
4 the end of that, you know.

5 Q But you gave it to Mr. Friedman?

6 A Definitely.

7 Q Okay. Do you know if Two Rivers had another door that
8 didn't have a card key on it did their facility?

9 A Sure. There's a lot of doors.

10 Q So if someone wanted to get into the building and didn't
11 want to use the card key, could they get in?

12 A Tell me again?

13 Q If someone wanted to get into the Two Rivers building --

14 A Right.

15 Q -- and they had a key to the door --

16 A They could get in, sure, but --

17 Q They wouldn't have to swipe a card?

18 A Right.

19 Q But the other door that you mentioned that had the card
20 swipe, you would have to swipe the door?

21 A No, one key, too, without a card.

22 Q So you are saying that you didn't have to swipe the card
23 to get into that?

24 A No, because you have a key.

25 Q But I think Mr. Finkel asked you and you said you had to

J. Salcedo - Redirect/Mr. Nelkin

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1 do both?

2 A No, you could do either one, me, in my case, you see what
3 I'm saying?

4 Q Okay. So there's a way to get in the building with just
5 a key?

6 A No, there was a swipe key, but I don't have to use it
7 because I have the key, too, for that door if I needed it.

8 Q That's my only question on that point.

9 If you could turn to Exhibit 112 and the second page
10 of that. And paragraph 3 on the second page, the third line.
11 It says that, "Mr. Friedman was present at the same time the
12 night that Mr. Salcedo was alleged to be in the facility." Is
13 that true?

14 A It's possible.

15 MR. FINKEL: Objection, Your Honor. That statement
16 does not come from the witness. It comes from the police
17 report.

18 THE COURT: He is not attributing it to anyone.
19 He's asking if it's true.

20 A I don't know; I don't remember.

21 THE COURT: It's not objectionable. It's permitted.
22 Do you know if Mr. Friedman was there that night?

23 MR. NELKIN: Just for the record, it comes from --

24 THE COURT: Not for the record.

25 Look, the question is whether Mr. Friedman was there

J. Salcedo - Redirect/Mr. Nelkin

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1 that night. Was he there?

2 THE WITNESS: I don't remember. It's been such a
3 long time, I'm not sure. I got a memory when it comes to that
4 type of stuff.

5 Q Well, if your lawyer wrote to the Court --

6 THE COURT: Mr. Nelkin, the question -- the question
7 he can answer is whether Mr. Friedman was there.

8 MR. NELKIN: Okay, fine.

9 THE COURT: All right. Everything else you will
10 argue.

11 MR. NELKIN: All right, thanks.

12 BY MR. NELKIN:

13 Q If you could turn to Exhibit 132 and to the second page.
14 Do you see that there's a desk in that picture?

15 THE COURT: Second page.

16 THE WITNESS: This one? (Indicating.)

17 THE COURT: Second page.

18 Q Second page.

19 THE WITNESS: This? (Indicating.)

20 THE COURT: Is that the second page? Then that's
21 the one he's asking about.

22 A Okay.

23 Q Do you see that there is a desk there in the -- on the
24 top-right corner?

25 A Yes.

J. Salcedo - Redirect/Mr. Nelkin

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1 Q And do you see that there appears to be a second desk
2 that's connecting sort of the way that Ms. Rivera's desk
3 connected to the other desk?

4 A No, I think that's the wall.

5 Q If you look, it's got --

6 THE COURT: Just, what is the question, please?

7 Q My question is, did that L-shape there of these two desks
8 look the same way that --

9 A That's the wall. That's not a desk.

10 Q Okay. Do you recognize, if you could look at the three
11 pictures on 132, can you tell me if you recognize based on the
12 pictures whose office that might be?

13 A No. All those offices looked alike. They all have the
14 same furniture.

15 Q Do they all have the same number of desks?

16 A Excuse me?

17 Q Do they all have the same number of desks?

18 A No. Some of them had one and some of them had two.

19 THE COURT: Move on.

20 MR. NELKIN: That's my last question, Your Honor.

21 THE COURT: Thank you, you are excused. All right.
22 We will take our lunch break and -- I'm sorry. I didn't mean
23 to cut you off.

24 MR. SCHAFHAUSER: I wanted to ask him one question,
25 Your Honor.

J. Salcedo - Recross-Mr. Schafhauser

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1 THE COURT: Recross on what we just heard?

2 MR. SCHAFHAUSER: One question on what Mr. Nelkin
3 had asked.

4 THE COURT: Go ahead.

5 RECROSS-EXAMINATION

6 BY MR. SCHAFHAUSER:

7 Q Mr. Nelkin asked you whether you could have moved the
8 videocameras. My question is, did you move the videocameras?

9 A I moved it once in a while to follow or look at cars
10 parked in the parking lot.

11 THE COURT: Okay. I take it that's what you wanted
12 to ask.

13 MR. SCHAFHAUSER: Thank you.

14 THE COURT: You are excused. All right, we will
15 reconvene at 2:00. Who is next?

16 MR. NELKIN: Mr. Papa.

17 THE COURT: Okay.

18 (Recess taken.)

19 (Continued on the next page.)
20
21
22
23
24
25

1 A F T E R N O O N S E S S I O N

2 (In open court.)

3 THE COURT: Sir, who are you?

4 MR. GOLDFARB: Akeev Goldfarb, and I represent
5 Mr. Nussbaum.

6 THE COURT: Is there some reason you need to take up
7 the time now while there is a witness waiting?

8 MR. GOLDFARB: I just wanted to clarify that I come
9 here to -- I understood there was a colloquy regarding
10 Mr. Nussbaum.

11 THE COURT: Sir, if you want to add something to a
12 record that's already passed, write a letter. I have a
13 witness waiting.

14 Do you have a witness, Ms. Nelkin?

15 MS. NELKIN: Yes, your Honor. The plaintiff will
16 call Vincent Papa, and with your permission I will examine the
17 witness.

18 THE COURT: Mr. Papa, come on up, please.

19 MR. ROSENBLATT: Your Honor, I just wanted to
20 introduce myself. Raphael Rosenblatt. I'm here for Hillel
21 Parness, of counsel, on behalf of Two Rivers. Thank you.

22 MR. GRANTZ: Your Honor, he said he was here on
23 behalf of Two Rivers. I understood that he was representing
24 Mr. Papa.

25 THE COURT: You are here as Mr. Papa's attorney?

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1 MR. ROSENBLATT: I'm here as attorney for Two
2 Rivers. So Mr. Papa is being represented in that capacity.

3 THE COURT: Okay.

4 MR. SCHAFHAUSER: Your Honor, I don't know that
5 there has been an appearance in the case yet.

6 THE COURT: There hasn't because he is a witness.

7 MR. SCHAFHAUSER: I understand, but he doesn't
8 represent --

9 THE COURT: We have a witness. He has counsel. Is
10 there a problem with that?

11 MR. GRANTZ: Only to the extent that he is
12 representing Two Rivers without the permission of
13 Mr. Friedman.

14 THE COURT: We will deal with it later.

15 MR. GRANTZ: Okay. Thank you.

16 THE COURT: There is an objection to having this
17 fellow have counsel provided by Two Rivers?

18 MR. GRANTZ: No.

19 MR. SCHAFHAUSER: The objection is, your Honor, that
20 under the Two Rivers operating agreement Mr. Friedman has
21 rights --

22 THE COURT: Mr. Friedman does not consent to have
23 this witness represented by counsel provided by Two Rivers?
24 That's what I want to understand you are saying.

25 MR. SCHAFHAUSER: Mr. Friedman --

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1 THE COURT: He doesn't consent?

2 MR. SCHAFHAUSER: This witness is -- the counsel is
3 not representing Mr. Papa. He is representing Two Rivers.

4 THE COURT: I understand. Two Rivers provided
5 counsel to represent Mr. Papa's interests here. Mr. Friedman
6 does not consent to that?

7 MR. SCHAFHAUSER: May I have one minute?

8 THE COURT: Of course, yes.

9 (Pause.)

10 MR. NELKIN: Your Honor, can I just ask if there are
11 any extra books.

12 THE COURT: Anything you want to talk with them
13 about, off the record.

14 (Pause.)

15 MR. SCHAFHAUSER: Your Honor, Mr. Friedman did not
16 receive notice of any -- I'm not authorized to consent.

17 THE COURT: Well, Mr. Friedman is sitting right next
18 to you. You just spoke to him. The authorization is not a
19 problem. He refuses to consent that's what you are telling
20 me.

21 MR. SCHAFHAUSER: He respectfully declines to
22 consent.

23 THE COURT: All right. Well, I can't ask you
24 because -- are you willing to testify without a lawyer who can
25 represent your interests?

Proceedings

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1 THE WITNESS: Yes.

2 THE COURT: You don't have to.

3 THE WITNESS: I'm willing to answer questions, your
4 Honor.

5 THE COURT: Okay. Ms. Nelkin?

6 MS. NELKIN: Your Honor, I'm going to say that the
7 plaintiff wants Mr. Papa to testify. We also believe that
8 Mr. Papa has a right to have an attorney to represent him as
9 well.

10 THE COURT: Sure, I think so too. Since we can't
11 resolve this, we will have motion practice. We will reconvene
12 at the defendants' costs, if I resolve this against them.

13 I'm not going to make this man testify without
14 counsel when he was planning on having it. So do you have
15 another witness that we can put on and, if so, when?

16 MS. NELKIN: Your Honor, his testimony was really
17 laying the background for our only other witnesses, the
18 plaintiff, Steven Schreiber.

19 THE COURT: When is he available?

20 MS. NELKIN: He is here.

21 THE COURT: Okay. You want to go ahead with him, or
22 do you want to take a break to prepare? Because this should
23 not be happening. This does not need to be a problem. It is
24 one made by one person, as far as I'm concerned.

25 MS. NELKIN: Your Honor, I would just like to point

1 out that Mr. Papa is the chief financial officer of Two
2 Rivers.

3 THE COURT: He is here an as employee of Two Rivers.

4 MS. NELKIN: Absolutely.

5 THE COURT: There is no reason he shouldn't have
6 counsel. I'm open to some other suggestion of how to proceed
7 so that we don't have the inefficiency of having to break down
8 due to Mr. Friedman's unwillingness to let this man have an
9 attorney represent his interests when he testifies.

10 MR. SCHAFHAUSER: Your Honor, most respectfully --

11 THE COURT: You can say it disrespectfully, if you
12 like. I would like a constructive suggestion.

13 MR. SCHAFHAUSER: Mr. Friedman's position is that
14 the right to consent to counsel -- and this is something --

15 THE COURT: I'm not interested in an explanation of
16 his position. I know what it is. I'm looking for a
17 constructive suggestion of something else we can do.

18 MR. SCHAFHAUSER: I don't have any suggestion
19 because this issue has been an impasse. This very issue of
20 Two Rivers representation of counsel was an impasse going back
21 to the litigation in New Jersey. This issue has been an
22 issue --

23 THE COURT: If you don't have a suggestion, let's
24 not waste further time telling me why you don't have a
25 suggestion. I'm looking for a constructive suggestion of how

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1 we can allow me to hear the testimony that will help me decide
2 the issues that are before me --

3 MR. SCHAFHAUSER: Your Honor, may I --

4 THE COURT: -- without having the ability to present
5 testimony obstructed.

6 MR. SCHAFHAUSER: I will respectfully ask for
7 another break. I have a recommendation for my client that I
8 need discuss with my client.

9 THE COURT: Well, I don't know if there is anything
10 else we can do at the moment. So take a break.

11 MR. SCHAFHAUSER: Then I will make that proposal to
12 counsel, if I --

13 THE COURT: Go ahead.

14 We are off the record until they return.

15 (Recess.)

16 THE COURT: Have a seat, please. All right.
17 Mr. Schafhauser, you said you were going to have a suggestion.

18 MR. SCHAFHAUSER: Yes. I actually was communicating
19 that to plaintiff's counsel. The suggestion is that
20 Mr. Friedman is prepared to give a limited consent for the
21 purpose of allowing Mr. Papa to be represented by
22 Mr. Rosenblatt for this evidentiary hearing so we don't need
23 to delay things. I don't know whether they have had a chance
24 to consider it because I was just communicating it, but the
25 proposed stipulation would be that by granting such consent

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1 his consent is not going to be construed or cited or deemed a
2 waiver of his rights or arguments under the Two Rivers
3 operating agreement or his rights regarding going to a Beth
4 Din arbitration, nor is it a waiver.

5 THE COURT: He doesn't waive anything. It just
6 allows us to move forward today.

7 MR. SCHAFHAUSER: That's the idea, and he also
8 doesn't waive his arguments as to representation of Two
9 Rivers' counsel.

10 THE COURT: It just lets us move forward with this
11 hearing; is that right?

12 MR. SCHAFHAUSER: That's correct.

13 MS. NELKIN: Except, Judge Orenstein, what
14 Mr. Schafhauser just said at the last moment, which is if his
15 giving his consent then puts my client at risk for his
16 alleging that Mr. Schreiber should have to pay the attorney's
17 fees for Mr. Papa to testify here today, then I don't think
18 that the burden should be shifted to us.

19 THE COURT: Look, I assume he is representing
20 Two Rivers on behalf of its employee Mr. Papa. I assume
21 that's coming out of costs for Two Rivers. Correct?

22 MS. NELKIN: Except that Mr. Friedman wants to
23 assert that that's an improper expenditure of Two Rivers'
24 funds.

25 THE COURT: Do you want to assert that?

Proceedings

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1 MR. SCHAFHAUSER: We are not asserting that --
2 again, we want the hearing to go forward.

3 THE COURT: Who gets to pay for the lawyer for
4 purposes of today?

5 MR. SCHAFHAUSER: For purposes of today, yes.

6 MR. NELKIN: Can we extend it for purposes of this
7 hearing?

8 THE COURT: For this hearing. So that Mr. Papa can
9 appear at this hearing, Two Rivers pays Mr. Rosenblatt to be
10 here, to provide counsel. No one waives anything. Two Rivers
11 pays the bill. Anybody object to that?

12 MR. SCHAFHAUSER: He has no objection to
13 Mr. Rosenblatt's appearance or payment for today, no.

14 THE COURT: Look, I assume he is here today --

15 MR. SCHAFHAUSER: Oh, if he comes tomorrow, yeah,
16 until Mr. Papa's testimony is concluded.

17 THE COURT: Right, and the preparation involved in
18 getting him here obviously.

19 MR. NELKIN: Mr. Parness as well, who is working in
20 conjunction with Mr. Rosenblatt.

21 THE COURT: Mr. Papa, come on up.

22 MR. SCHAFHAUSER: Well, the consent is for
23 Mr. Rosenblatt to be paid for his representation of Mr. Papa
24 at the hearing.

25 THE COURT: Mr. Rosenblatt, are you part of the firm

1 with Mr. Parness?

2 MR. ROSENBLATT: I'm not part of his firm but I'm
3 here in an of counsel capacity.

4 THE COURT: I'm not resolving anything about
5 Mr. Parness today because we don't need Mr. Parness here to
6 get this man to testify.

7 Raise your right hand, please.

8 **VINCENT PAPA**, called as a witness, having been first duly
9 sworn/affirmed, was examined and proceeded to testify as
10 follows:

11 THE COURT: Have a seat, please.

12 DIRECT EXAMINATION

13 BY MS. NELKIN:

14 Q Mr. Papa, would you please state your full name?

15 A Vincent Papa.

16 Q Where do you reside, Mr. Papa?

17 A Long Valley, New Jersey.

18 Q Can you tell us what your educational background is?

19 A I'm an accounting major, graduate of Iona College.

20 Q Are you a CPA?

21 A No, I am not.

22 Q How are you currently employed?

23 A By Two Rivers Coffee.

24 Q When were you first employed by Two Rivers?

25 A June of 2013.

V. Papa - Direct/C. Nelkin

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1 Q What is your job title at Two Rivers?

2 A Chief financial officer.

3 Q Can you just briefly tell us what your primary
4 responsibilities are at Two Rivers.

5 A To prepare and install -- to install systems and prepare
6 financial statements, implement financial controls, things of
7 that nature.

8 Q Now, you mentioned that you are not a CPA.

9 During the time that you have been employed at Two Rivers
10 has Two Rivers always had an outside accountant?

11 A Yes.

12 Q And who was the outside accountant when you became
13 employed?

14 A Mike Devine.

15 Q And you are aware that there is -- there was a
16 preliminary injunction entered in this case?

17 A Yes.

18 Q Since that preliminary injunction has Two Rivers had
19 another outside accountant?

20 A Yes.

21 Q And what is that outside accountant's name?

22 A Meglio, M-E-G-L-I-O, and Associates.

23 Q Mr. Papa, do you know the Plaintiff Steven Schreiber?

24 A Yes.

25 Q How do you know Mr. Schreiber?

V. Papa - Direct/C. Nelkin

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1 A We work together at Two Rivers.

2 Q Do you know what Mr. Steven Schreiber's primary duties
3 are at Two Rivers?

4 A Yes.

5 Q What are they?

6 A Logistics, he sets up customers, new customers, he works
7 on refuting customer deductions.

8 THE COURT: I'm sorry, doing what?

9 THE WITNESS: Refuting customer deductions that are
10 improper in our opinion.

11 A (Continuing) He supports IT when needed, he evaluates
12 equipment for us when needed, the ROI. Operations basically.

13 Q Do you know Steven Schreiber's father, Eugene Schreiber?

14 A Yes.

15 Q How do you know Eugene Schreiber?

16 A We work together at Two Rivers.

17 Q Are you aware of what Mr. Eugene Schreiber's primary
18 duties and responsibilities are at Two Rivers?

19 A Yes.

20 Q What are they?

21 A Well, his title is the president. He is primarily
22 responsible for procuring and designing equipment used in the
23 manufacturing process. He oversees the plant engineer, the
24 plant manager. So all of production and QC, I believe,
25 directly reports to him.

V. Papa - Direct/C. Nelkin

1197

1 Q Do you know Mayer Koenig?

2 A Yes.

3 Q Do you also work with Mayer Koenig at Two Rivers?

4 A Yes.

5 Q Do you know what Mr. Koenig's responsibilities are?

6 A Yes.

7 Q Can you tell us what his primary responsibilities are?

8 A Sales and marketing.

9 Q Do you also know Emil Friedman?

10 A Yes.

11 Q How do you know Mr. Friedman?

12 A Work together at Two Rivers.

13 Q Do you have -- when you first met Mr. Friedman were you
14 told what his primary role in the Two Rivers was?

15 A He was described to me as an investor, as a chief
16 negotiator, and those were the general terms.

17 Q When you first came did that appear to be what his role
18 was?

19 A Well, when I first started I didn't have a whole lot of
20 contact with him. So I don't know what he did at first. I
21 wasn't up to speed on what he did really.

22 Q Well, at some point in time did Mr. Friedman's role
23 appear to you to be something other than an investor?

24 A Yes.

25 Q Okay. Can you tell us what you began to see his role as

V. Papa - Direct/C. Nelkin

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1 being?

2 A He began to exert more and more control, certainly over
3 disbursements, check signing. All checks were authorized
4 through him. He had more and more control over payroll, and
5 he had more and more control over IT, in terms of which system
6 we would deploy.

7 Q When you say which system you would deploy, are you
8 familiar with the Launch system?

9 A Yes.

10 Q Can you just tell us what the Launch system is?

11 A Well, the intent was there was to be a custom-designed
12 enterprise resource planning type system. It never reached
13 that level. It was primarily used to write checks, record
14 purchases, and process payroll.

15 Q Were you involved in the initial discussions about
16 implementing the Launch system?

17 A I was involved in discussions. I don't know if they were
18 initial because I don't know when they may have started before
19 me, but I was certainly involved in discussions about what
20 Launch Coffee should do and should not do.

21 Q Who else was involved in those discussions?

22 A Well, Emil, Yossi -- I don't know his real name -- Yossi
23 Rosenkowsky. I don't know his last name. I'm sorry.

24 Q Are you referring to Yossi Rogosnitzky?

25 A Yes. Thank you.

V. Papa - Direct/C. Nelkin

1199

1 Q I hope I pronounced it right.

2 A Yes, I'm referring to him. And at times it was the other
3 members of the LLC.

4 Q Just for the record, who do you understand the other
5 members of the LLC to be?

6 A Well, Steven, Mayer, Eugene. Launch Coffee was discussed
7 endlessly at times.

8 Q Okay, and you understood that the four partners in Two
9 Rivers were Mr. Friedman, the two Schreibers, and Mr. Koenig?

10 A Yes.

11 Q Now, were you in favor of implementing the Launch system?

12 A No.

13 Q Why not?

14 A Because in my opinion or in my judgment it was
15 unnecessary to custom design a system. I don't think the
16 resources were there to implement it as discussed, i.e. one
17 programmer overseas. It was not controlled in the proper
18 manner.

19 There was no budget for it that I was aware of.
20 There was no contractual agreement that I was aware of. There
21 was no definition as to the scope of the project.

22 It was a poorly conceived and poorly implemented
23 project that was completely unnecessary and prevented us from
24 doing things that were necessary.

25 Q Do you know if Eugene Schreiber was in favor of the

V. Papa - Direct/C. Nelkin

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1 Launch system?

2 A He was not.

3 Q Do you know if Steven Schreiber was in favor of
4 implementing the Launch system?

5 A He was not.

6 Q And do you know if Emil Friedman was?

7 A Yes, he was.

8 Q And what about Mayer Koenig?

9 A He was not.

10 Q But was the Launch system nonetheless implemented?

11 A In various degrees, yes.

12 Q Now, were there other -- are you familiar with the term
13 ERP system?

14 A Yes.

15 Q What is an ERP system?

16 A Enterprise resource planning.

17 Q And what is an enterprise resource planning system?

18 A It's a comprehensive solution for a manufacturing
19 company. It would cover everything from purchasing to
20 scheduling to production to financial statements. It's the
21 backbone of the company. All things flow through a properly
22 designed and implemented ERP.

23 Q At the time Two Rivers was discussing implementing the
24 Launch system, were there off-the-shelf ERP systems that could
25 have been implemented instead?

V. Papa - Direct/C. Nelkin

1201

1 A Yes.

2 Q And can you just give us some names of those systems?

3 A Well, we used QuickBooks Enterprise system, which was
4 inadequate; but Sage puts out a family of products, an ERP
5 suite that would be adequate. Oracle is a higher-end platform
6 that was probably too much for us. Net Suite. There is
7 dozens of ERP companies that would serve a medium-sized
8 manufacturer like ours.

9 Q And did you and Mr. -- the two Schreibers and Mr. Koenig
10 believe that implementing one of those systems would have been
11 a preferred method to a system that was designed by an Israeli
12 gentleman who was a sole independent contractor?

13 A Yes.

14 MR. SCHAFHAUSER: Objection, leading.

15 THE COURT: Don't lead. Do you want to ask another
16 question?

17 MS. NELKIN: Yes.

18 Q Can you tell us whether or not the -- well, can you tell
19 us approximately when the Launch program was initiated?

20 A Well, by initiated do you mean used, or do you mean
21 developed?

22 Q Well, let's do both.

23 When was it in the development stages?

24 A My understanding it was in development prior to my
25 arrival and then development continued.

V. Papa - Direct/C. Nelkin

1202

1 THE COURT: I'm sorry. When did you arrive?

2 THE WITNESS: June of 2013.

3 THE COURT: Sorry to interrupt. Go ahead.

4 A I believe, to the best of my recollection, it was
5 implemented sometime mid-2014.

6 Q As the chief financial officer of Two Rivers, did you
7 ever see a contract or a proposal or a scope of work for the
8 Launch program?

9 A No, I did not.

10 Q Did you ask for one?

11 A I discussed the lack thereof, yes.

12 Q Who did you discuss it with?

13 A Emil, primarily.

14 Q What was the nature of the discussion you had with
15 Mr. Friedman?

16 A It was largely one sided. I was told -- first I was told
17 it was none of my business. Then I was told that he knew what
18 he was doing and it was primarily my job to implement what he
19 decided.

20 Q And was that in fact carried forth?

21 A That Launch was implemented?

22 Q Yes.

23 A Yes.

24 Q Do you know what Two Rivers paid for Launch?

25 A We paid a JRIT Consulting, I think, 19,000, maybe 15,000.

V. Papa - Direct/C. Nelkin

1203

1 I'm not a hundred percent sure.

2 Q Prior to December 14 of 2015 what access did you have to
3 Launch?

4 A I primarily accessed Launch for disbursements, purchases,
5 and limited payroll information.

6 Q Do you know whether or not you had full access to the
7 Launch program?

8 A I did not.

9 Q Do you know who did have full access to it?

10 A Not really.

11 Q What access did you have?

12 A What access?

13 Q Yes. What could you do as the CFO?

14 A Well, I could see disbursements that were already
15 disbursed under what checks were written. I could see vendor
16 invoices that were entered, and I could run limited payroll
17 reports to determine what payroll was issued for the prior
18 week.

19 Q Mr. Papa, do you see in front of you a book that's marked
20 Plaintiff's Exhibits. It's probably the largest book in front
21 of you.

22 A I have two large books. I assume it's one of these.

23 Q If you look at the front of this, it should say
24 Plaintiff's Exhibits.

25 A This is Plaintiff's Exhibits. Okay.

V. Papa - Direct/C. Nelkin

1204

1 Q I would like to direct your attention to Exhibit 35.

2 A Okay.

3 Q Have you seen this exhibit previously?

4 A I saw this earlier today or last night for the first
5 time.

6 Q All right. Do you see your name listed on Exhibit 35?

7 A Yes, I do.

8 Q Do you see a column that says role name?

9 A Yes.

10 Q What does it say next to your name with regard to role
11 name?

12 A Financial manager.

13 Q If we just go back up to the top where it says role name
14 and it says administrator, and if you go across that column
15 you see an e-mail address, it's nspeck@gmail.com?

16 A Yes.

17 Q Do you know whose e-mail address that is?

18 A That's Yossi Rogosnitzky.

19 THE COURT: I think for ease of reference we are all
20 calling him Yossi.

21 THE WITNESS: Yossi, thank you.

22 Q If you look at the second listing under role name, do you
23 see that it says executive director?

24 A Yes.

25 Q Do you see, moving across the column, it says executive

V. Papa - Direct/C. Nelkin

1205

1 director is Mr. Friedman's name?

2 A Yes.

3 Q And do you recognize that as one of Mr. Friedman's e-mail
4 addresses in the column?

5 A It's not one that I have used. So no, I don't.

6 Q Now, do you know who Cindy Jones is?

7 A Yes.

8 Q Who is Cindy Jones?

9 A She was an administrative assistant that was employed by
10 Two Rivers from 2012 through the time we moved South
11 Plainfield.

12 Q The next column down again says executive director?

13 A Yes.

14 Q Next to that, going across, is Ms. Rivera's name?

15 A Yes.

16 Q Who is Ms. Rivera?

17 A She was a bookkeeper.

18 Q As CFO of Two Rivers were you a higher-level employee
19 within the company than Ms. Rivera?

20 A One would think.

21 Q And if we keep going down the roll name column, does it
22 again say executive director and then, going across, it says
23 Silvia Ezell?

24 A Yes.

25 Q Do you know Ms. Ezell?

V. Papa - Direct/C. Nelkin

1206

1 A Yes.

2 Q Was she an employee of Two Rivers?

3 A No.

4 Q How do you know Ms. Ezell?

5 A On various occasions I worked with her while I'm working
6 at Two Rivers.

7 Q And what would be an occasion that you worked with
8 Ms. Ezell?

9 A Well, she from time to time would call me to help me
10 track down credit card receipts that she may have been looking
11 for that certain individuals didn't comply with. She
12 processed, to the best of my knowledge, insurance-type
13 information. She filled out paperwork for regulatory
14 authorities, like New Jersey taxing authorities. So she
15 wanted information.

16 She handled -- I think she handled worker's comp
17 claims or any employer liability claims. So she would want
18 information about that, things of that nature.

19 Q And these things that you said that she did, was she
20 doing that on behalf of Two Rivers?

21 A Yes.

22 Q Do you have any understanding of where -- who she was
23 employed by?

24 A No.

25 THE COURT: Can you help me understand that

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1 relationship. The first time you hear from Ms. Ezell she is
2 not an employee, she is asking for this information. Do you
3 have any discussion about what her role was or why she was
4 doing this?

5 THE WITNESS: Well, I knew that Emil as an investor
6 owned many businesses, and it was like a share of
7 administrative services type set up. So it wasn't shocking to
8 me that she was not technically employed by Two Rivers.

9 THE COURT: But she identified herself as somebody
10 who works for Mr. Friedman?

11 THE WITNESS: Yes.

12 THE COURT: I'm just trying to understand how you
13 knew to share information with her.

14 THE WITNESS: Yes. I was introduced to her by Sonia
15 or Emil. I forget which one, but I knew that Sonia and Silvia
16 worked together and I was to give Silvia what she needed to do
17 her job.

18 THE COURT: Okay. Thank you. Go ahead.

19

20 BY MS. NELKIN:

21 Q Okay. We discussed that you were listed as financial
22 manager.

23 If we go down one past your name, it says director; and,
24 going across, it says Eugene Schreiber.

25 A Yes.

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1 Q Now, I believe you testified that Mr. Schreiber was the
2 president of Two Rivers.

3 A That's his title, yes.

4 Q Would you think that he would have more or less access to
5 the Launch system than Ms. Rivera or Ms. Ezell?

6 A Well, he should have full access, yes.

7 Q And in your experience in the corporate world, is an
8 executive director higher level than a director?

9 A Yes.

10 MR. FINKEL: Objection.

11 THE COURT: Sustained. Look, let's not ask him to
12 speculate about what happens elsewhere. We have this
13 evidence. I can read it. Let's move on to things he can tell
14 us about from his personal knowledge.

15 MS. NELKIN: Yes.

16 Q And if we look at the next column in roll, it says
17 financial manager next to Steven Schreiber's name.

18 A Yes.

19 Q Would you think that --

20 THE COURT: I don't know if you understood what I
21 said. Perhaps I wasn't too clear. I would like you to move
22 on from this exhibit. I get it.

23 MS. NELKIN: I'm sorry, your Honor.

24 THE COURT: If there is some information he has
25 about it that hasn't been elicited yet, by all means; but if

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1 it's a matter of pointing out who has what title, I'm not sure
2 it's particularly useful to me.

3 MS. NELKIN: Your Honor, if I may ask one more
4 question about it.

5 Q There is a name listed, Mr. Papa, as -- if you look, the
6 name is Jordan Napolitano.

7 A Yes.

8 Q Do you know who Jordan Napolitano was?

9 A Yes.

10 Q Who is she?

11 A She was a person hired by, I believe, Emil to support
12 Sonia. She was an administrative aide, inexperienced young
13 person.

14 Q Approximately how old was she?

15 A Eighteen, nineteen, twenty tops.

16 Q And she is listed as an executive director so far as
17 Launch is concerned?

18 A Yes.

19 Q Mr. Papa, did you ever complain to anyone at Two Rivers
20 about the fact that your access to the Launch system was
21 limited?

22 A Yes.

23 Q Who did you complain to?

24 A Emil, probably Eugene, Steven, Mayer. I would have
25 talked to anybody at that point about problems.

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1 Q When you talked to Mr. Friedman about it, what was his
2 response?

3 A Well, sometimes he was receptive, if he agreed with my
4 need. If he disagreed with my need, nothing was done.

5 Q Well, specifically with respect to the Launch system,
6 prior to entry of the preliminary injunction in this matter
7 was your access to the Launch system ever changed?

8 A Prior to the preliminary injunction, yes. There would be
9 times when I would demonstrate a need and I would get a little
10 more information available to me.

11 Q Would that be on a one-time basis, or was that once it
12 was established and you had a different access?

13 A Well, it was as needed. So if there were times when I
14 ran into a problem with not having access to information, that
15 either Ben or Yossi would grant me more access, but there were
16 many times that that access was not granted.

17 Q And it would be Ben and Yossi who would grant you, as the
18 CFO, the access?

19 A They would grant me the access after consultation with
20 Emil. They very rarely did anything without his consent.

21 THE COURT: Can I just ask, because I'm not quite
22 getting it. You told me the access you did have, but I don't
23 have a clear picture of the thing you didn't have that you
24 sometimes thought you needed. Can you give me specifics.

25 THE WITNESS: I had access to the payroll reports,

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1 but I did not have access to the actual compensation that
2 employees actually earned, which is kind of odd.

3 THE COURT: You couldn't find out from the system
4 the salaries of employees?

5 THE WITNESS: Correct.

6 THE COURT: Okay.

7 THE WITNESS: Sometimes I would have to run reports
8 for demographic-type information, where I had to sort the
9 payroll data, new hires, full-time, part-time, et cetera, I
10 couldn't do that.

11 THE COURT: Uh-huh.

12 THE WITNESS: I could not enter information into the
13 system, like new vendors. I certainly couldn't cut checks.
14 So things like that. I could view checks that were cut, but I
15 could not create information.

16 THE COURT: Okay. Go ahead.

17 BY MS. NELKIN:

18 Q Mr. Papa, Judge Orenstein anticipated some of my
19 questions.

20 My next question was: Did you encounter any problems as
21 the CFO because you had this limited access?

22 A Yes.

23 Q Okay. And you explained to Judge Orenstein some of the
24 problems that you had, but, for example, if you -- if a new
25 employee came into the company did you have some

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1 responsibility for seeing to it that that new employee would
2 get entered into Launch?

3 A Yes. There was a person on my staff who entered that
4 person's information into Launch.

5 Q Then what would happen once that was done?

6 A Well, eventually they would get paid, but that
7 information was also reviewed by Sonia. We would scan the
8 documentation, either the employment app or the W-4, and then
9 hours would be accumulated, and then eventually the person got
10 a paycheck.

11 Q Did you have access to what the rate of pay for the
12 employee would be?

13 A Only at time of data entry, when we entered it, but after
14 then it was blocked from my view.

15 Q Did that create any problems for you?

16 A Yes. I mean it's -- it's -- to be honest, it's
17 insulting, but, yes, there were times when I needed access to
18 payroll information. For instance, we were getting insurance
19 quotes. I needed access to demographic-type information. Not
20 having complete access to payroll was not the way it should
21 have been.

22 Q Were there any problems that you encountered with regard
23 to wage and hour issues?

24 A You are talking before the TR0, in total?

25 Q Before the TR0. Did you have concerns about potential

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1 problems?

2 A Yes.

3 Q About --

4 A Yes.

5 Q And this would be with regard to the hours that were
6 being recorded for employees?

7 A Yes.

8 Q All right. Can you tell us what those concerns were?

9 A There were oftentimes discrepancies between the punched
10 hours or the hours accumulated by the time clock versus the
11 hours that were actually paid. Those decisions were made by
12 Emil. I did not agree with the process that he employed. I
13 think that he placed the company at undue risk, for not making
14 a greater effort to resolve those types of discrepancies and
15 not unduly penalize the employee by not paying them correctly.

16 Q Okay. How did it work? What control did Mr. Friedman
17 have over the time entries?

18 A Complete.

19 Q Were you responsible for payroll, as one of your duties?

20 A Prior to -- no, prior to the TRO, no, I was told to stay
21 out of it.

22 THE COURT: I'm not quite following. So an employee
23 would punch in and punch out a certain number of hours and get
24 paid for a different number? How would that work?

25 THE WITNESS: Well, the issues were the employee may

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1 punch in but they didn't punch out. So Mr. Friedman took the
2 position if the employee didn't punch out he wasn't going to
3 pay them; he was going to teach them a lesson, if you doesn't
4 punch out you don't get paid. He ultimately did pay them, but
5 it was two weeks later.

6 My position is that you know the employee is here.
7 You can simply resolve that issue and cut the check right the
8 first time. I believe it's the burden of the employer to
9 resolve that.

10 THE COURT: But you didn't have a set number of
11 hours in the system. You had to determine it. You had
12 different ways of figuring out what to do about that?

13 THE WITNESS: Yes. We had that also. We had
14 rounding rules. If an employee worked overtime, if they
15 punched out early or punched out late. That's all part of
16 payroll processing. You have to determine how to pay those
17 hours or not.

18 THE COURT: Okay.

19 BY MS. NELKIN:

20 Q Did Mr. Friedman utilize a computer on which he dealt
21 with the time?

22 A Yes.

23 Q Did you or anyone else at the company have access to that
24 computer so you could see what was going on with regard to how
25 the time was being recorded?

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1 A I didn't have access to his computer, and I don't believe
2 I had access to the underlying hours, hours that were in the
3 system. I think that's another area that I did not see.

4 Q You said that you were concerned about this.

5 Was anyone else in the company concerned about it?

6 A Well, Eugene and Steven were because they would hear from
7 employees that once again their paycheck was wrong, and we
8 would cut or he would cut maybe 20 or 30 adjustment checks per
9 week. That's an outrageous number of corrections to have on a
10 hundred-person payroll. So it was constantly brought up that
11 employees weren't being paid properly.

12 Q When you say adjustment checks would be cut, who was
13 cutting those checks?

14 A Emil.

15 Q And was that -- what was the process by which that had to
16 be done?

17 A Well, the preceding process was that he would review the
18 time with an employee of his choosing, Chris Molina, who was
19 an administrative aide to the plant manager. They would
20 determine the correct hours to pay. If the employee
21 complained to somebody, either other members of the LLC or
22 myself or management, and he agreed with that correction, he
23 would process a correcting paycheck. It maybe took two weeks.

24 Q In addition to the payroll issues did you have problems
25 because your access was limited with regard to payment for

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1 credit card matters?

2 A Well, I had -- that depends on the role that I'm being
3 asked to play. So, if I may, I was told from day one that my
4 role was to record disbursements, not verify, review, and
5 approve.

6 So most of those credit card payments, my job was
7 limited to just recording them. I got a summary of the
8 charges as to which general ledger account they wanted to be
9 charged to. If I requested backup to support those charges, I
10 was told it was none of my business.

11 Q And with whom did you have that discussion where you were
12 told it was none of your business?

13 A Well, Emil certainly, Sonia, again, Eugene, Steven,
14 Mayer. There was a period of time when the credit card
15 charges got pretty excessive, and I said there is a lot of
16 disbursements being made here and I can't review them or
17 verify them or approve them. I can't even determine that they
18 are being charged to the correct accounts because I don't know
19 what they are other than what I'm being told.

20 THE COURT: You mentioned, I think, three of the
21 four partners, all of them were saying it was none of your
22 business.

23 THE WITNESS: No, only Emil said so. Well, Emil
24 said it was none of my business; and, honestly, at one point
25 Eugene told me to stop asking so many questions also because

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1 he said Emil was getting upset I was asking too many
2 questions.

3 THE COURT: All right.

4 Q And when -- did Mr. Schreiber explain to you what his
5 concern was when he told you not to ask -- not to deal with
6 issues?

7 A He was concerned that I was going to be terminated
8 because I was too much of a problem because I asked too many
9 questions.

10 Q And was -- did he indicate to you who he thought might be
11 going to terminate you?

12 A Well, he indicated that Emil was getting upset, that I
13 was asking too many questions.

14 Q With regard to the credit cards, at the time prior to
15 entry of the preliminary injunction what was your
16 understanding as to where the -- whose credit cards were these
17 charges being put on?

18 A For the most part, I did not know whose credit card. All
19 I saw was the name of the credit card company and the last
20 four digits of the card number.

21 Q Did you come to understand that this was not a company
22 card but personal cards of Mr. Friedman?

23 A Well, I knew they were not company cards. Then again, I
24 did not know exactly whose card it was.

25 Q Did you subsequently learn whose it was?

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1 A Yes.

2 Q Who did you learn that it was?

3 A I'm sorry, who did I learn?

4 Q Whose card did you learn that these charges were being
5 put on?

6 A Well, some of them were his, some of them were others.
7 There is a variety of credit card charges that went through
8 the company. They were not all Emil's.

9 Q Do you know if the majority of them were?

10 A I don't know a majority because, again, I don't know -- I
11 never put a schedule together associating each number with
12 each name. So I can't really say whether it's a majority of
13 or not.

14 Q And once the preliminary injunction was put in place in
15 December of 20 -- well, there was a temporary retraining order
16 entered in December of 2015 and ultimately a preliminary
17 injunction in January.

18 At that point in time did you get increased access to the
19 Launch program?

20 A Yes.

21 Q Can you tell us how that came about?

22 A Well, it was after some back and forth. I was finally
23 given Sonia's user name and Sonia's password, and that gave me
24 greater access to Launch Coffee.

25 Q When you say there was some back and forth, was there any

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1 kind of problem with obtaining the password?

2 A Well, I don't know. I would assume there was a problem.
3 I didn't get it right away. So I can only assume that there
4 was a delay. There was some concern about the TR0. The
5 preliminary injunction prohibited Ben and Yossi from working
6 on the system. It just took a while to get to me. I don't
7 know all the back and forth that goes on with this crowd.

8 THE COURT: I ask you to pause for a minute. I
9 apologize, everybody. Be back in just a moment.

10 (Pause.)

11 THE COURT: Thanks.

12 (Continued on the next page.)
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1 BY MS. NELKIN (cont'd.):

2 Q Mr. Papa, I believe you had stated that after entry of
3 the temporary restraining order, preliminary injunction in
4 this case, that you were then able to sign in using Sonia
5 Rivera's passwords; is that correct?

6 A Yes.

7 Q Okay. And once you did that, what access were you given
8 to the Launch program?

9 A I don't know the full extent of it because I only signed
10 in to get what I needed. So I did not sign in and explore the
11 whole system. So I can't really answer what greater access
12 that gave me.

13 Q But did you have more access than you had previously?

14 A Yes.

15 Q And was there a point in time after the preliminary
16 injunction had been entered in this case where you no longer
17 had any access to Launch?

18 A Yes.

19 Q Can you tell us approximately when that was.

20 A I would guess February, either side of February, maybe.
21 I don't know for a fact without looking.

22 Q And that would be of this year, 2016?

23 A Yes.

24 Q And were you given any warning that the Launch system was
25 going to be turned off or that you were no longer going to

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1 have any access to Launch whatsoever?

2 A No.

3 Q Had you received any kind of a demand for payment from?
4 Mr. Rogosnitzky with regard to the Launch system.

5 A No, I did not.

6 Q And as CFO, would you have expected to have received any
7 kind of monetary demand if someone was making it?

8 A If there was a demand for disbursement placed on a
9 company, yes, I would expect to see it.

10 Q And you did not see anything concerning a demand for
11 payment that the Launch system was going to be shut down
12 unless payment was made?

13 A Correct.

14 THE COURT: Can I ask, in the interim between when
15 you first got access to Ms. Rivera's log-in information and
16 when it was shut off, were there any difficulties in using
17 Launch that you experienced?

18 THE WITNESS: Between what time period? I'm sorry.

19 THE COURT: During that period when you were using
20 Ms. Rivera's log-in information, was it working then?

21 THE WITNESS: It wasn't necessary for me to use
22 Launch then.

23 THE COURT: Okay.

24 THE WITNESS: It was just for background
25 information. I was processing information for another system.

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1 THE COURT: Got it.

2 Go ahead.

3 THE WITNESS: It was just --

4 BY MS. NELKIN:

5 Q From the time you say in February up until the last few
6 days, has there been access to Launch?

7 A Not to my knowledge.

8 Q Now, was -- in addition to Launch, did the company use
9 some other system?

10 A Yes.

11 Q What was that system?

12 A We used QuickBooks Enterprise and we used a system called
13 Misys, M-I-S-Y-S.

14 Q And why was it necessary to use these other systems in
15 addition to Launch?

16 A Well, because Launch was very limited in scope. It only
17 was in effect a glorified checkbook and a payroll processing
18 operation. It was not a full-scale accounting system.

19 Q So you said that Two Rivers used QuickBooks. How was
20 QuickBooks being used at the time that Launch was also being
21 used?

22 A Well, QuickBooks was a system we entered our orders on.
23 We did our billing on QuickBooks. We generated our financial
24 statements on QuickBooks. We attempted to control inventory
25 on QuickBooks. Most of those -- none of those were really

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1 done on Launch.

2 Q How would the information -- how would you coordinate the
3 information between Launch and QuickBooks?

4 A What I did was or my staff, I ran reports on Launch
5 specifically regarding disbursements that were made and/or
6 purchases that were entered or payroll that was processed. So
7 from those reports I entered information that I deemed
8 appropriate into QuickBooks.

9 Q And when you say you "deemed appropriate," what
10 criteria --

11 A Well, there was some transactions in Launch that I --
12 that were not generally accepted accounting principles, so I
13 do not enter those.

14 Q Can you give us an example.

15 A If there was a commitment for a purchase of equipment
16 that required progress payments over time, the tendency in
17 Launch was to enter the full amount as an item or an expense
18 or an asset. And that's improper at that time. It's really,
19 you can't enter future commitments into your books, you know,
20 currently. You have to enter them at the time they earned or
21 they are due because I can explain more accounting, but I
22 don't think you want more of that unless you do.

23 Q But in any event, you had concerns about some of the
24 entries in Launch, so those simply you would not bring those
25 over into QuickBooks?

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1 A Correct.

2 THE COURT: May I ask a question about the mechanics
3 of this. You say bring it over, transferring the information
4 electronically in any way or just by hand?

5 THE WITNESS: Manually entered, total duplicate
6 entries.

7 THE COURT: Okay, go ahead.

8 THE WITNESS: Two staffs, two processes.

9 THE COURT: Go ahead.

10 Q Did you have any concerns about the situation where there
11 were two, basically two accounting programs going on?

12 A Well, it wasn't easy for me to work that way, but since
13 the financial statements with respect being produced from
14 Launch, I was able to work around it. But it certainly was
15 harder for me to determine what I needed and understand what I
16 was looking at working from a report not oftentimes from the
17 original documentation. So many times I had to get the
18 underlying invoice which oftentimes was scanned into Launch
19 and that's where it still resides today.

20 Q And when you say it was scanned, do you know who was
21 scanning it into Launch?

22 A Well, it would either be Sonia or someone under her --
23 could have been Jordan or someone that was working with Sonia.
24 But Launch was designed to electronically keep records. So
25 vendor invoices that may have been e-mailed to Sonia or even

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1 physically mailed to her, Sonia or her delegate would enter
2 that information or electronically get it into Launch. They
3 were trying to get away from paper files.

4 Q And so would it be a fair statement to say that important
5 financial information was entered and stored on to the Launch
6 system?

7 A Absolutely.

8 Q And would it be fair to say that once the system shut
9 down, you did not have access -- Two Rivers did not have
10 access to that data?

11 MR. SCHAFHAUSER: Objection; leading.

12 THE COURT: Yes, please don't lead.

13 MS. NELKIN: I'm sorry.

14 Q Mr. Papa, can you tell me whether or not once the system
15 was shut down you were able to access all the historical
16 financial data of the company?

17 A I could not access without Launch, I could not access all
18 the financial data required for Two Rivers.

19 Q Mr. Papa, did you become aware after -- after the entry
20 of -- well, how did you become aware of the entry of the
21 preliminary injunction?

22 A I believe Eugene gave it to me. It was a printout. It
23 was given to me and I was told to be aware of it and read it
24 and follow it.

25 Q And at some point in time, did your responsibilities in

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1 the company change as a result of that entry of the
2 preliminary injunction?

3 A Yes.

4 Q How did they change?

5 A Well, I assumed responsibility for payroll. I assumed
6 more responsibility for human resources. And I became much
7 more involved in cash management.

8 Q In -- in addition to your additional responsibilities,
9 were you at some point advised that you were going to be the
10 focal point for receipt of books and records of the company?

11 A I was also given a copy of the proceeding or the minutes
12 of the meeting you had here at December 4th where it was
13 discussed that I would be the recipient of all that
14 information. So yes, I was aware of the fact that I was to
15 get all the information that all the parties had.

16 Q Did you, in fact, receive information after entry of the
17 preliminary injunction?

18 A Yes.

19 Q Can you tell us what the first information that you
20 received after entry of the preliminary injunction was.

21 A I can't tell you what was first, but I did get a box from
22 Mike Devine's office that contained the tax returns, the
23 payroll tax returns, W-2s for years 2012 through 2014. I got
24 a couple of -- I got 1099s that he had issued. I think I got,
25 like, some corporate paper, maybe a certificate of formation

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1 that he might have had, generally what I would have expected
2 from an outside tax accountant.

3 Q What was the volume of the documents?

4 A I'm sorry?

5 Q What was the volume of the documentation?

6 A It was one box from Mike's office (indicating).

7 Q And you said you got it for 2012. Do you know from what
8 date in 2012?

9 A I said tax returns 2012 through 2014 and payroll tax
10 returns through the third quarter of 2015.

11 Q Okay. With regard to any payroll records, did you
12 receive any payroll records?

13 A Limited. Depends on what you mean by "payroll records."
14 For instance, a W-2 could be considered a payroll record. So
15 yes, he did give me W-2s that he generated. I did not receive
16 what I consider critical, the underlying payroll record
17 indicating who was paid, how many hours were paid, whether he
18 paid overtime or not, those are the payroll records that we
19 are required to maintain by law and we don't have. And I did
20 not get those from Mike and I don't believe he has those.

21 Q When you say you "don't believe he has those," do you
22 know whether or not he was the person who was keeping those
23 records for Two Rivers?

24 A I don't know, but I believe he was not.

25 Q What is the basis for your belief?

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1 A Because the payroll was processed in Launch Coffee. And
2 my belief is that he would just be -- he just would have
3 received the reports from Sonia telling him which taxes were
4 withheld and what he had to remit. One of the two remitted
5 the tax withheld and filed the appropriate return. I think
6 Mike filed the appropriate return based on the information he
7 was given.

8 Q If -- did you also receive documents that did not come
9 from? Mr. Papa -- I'm sorry, from Mr. Devine.

10 A Yes, I received two or three boxes of what I would refer
11 to as vendor files, accounts payable files. They were folders
12 by vendor with invoices in those folders.

13 Q And do you know where those came from?

14 A They came -- either had Mr. Schafhauser's name on it or
15 Sonia. I don't remember exactly where they came from, no.

16 Q Let me direct your attention, Mr. Papa, to Plaintiff's
17 Exhibit 128. Do you have that in front of you?

18 A Yes, I do.

19 Q Okay. And because it's an e-mail chain, we are going to
20 have to start at the back of page 6 of Exhibit 128. And let
21 me just ask you do you recognize this exhibit? Have you seen
22 it previously?

23 A Yes.

24 Q Okay. And can you just briefly described what you
25 understand this document be.

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1 A Starting with page 1 or parting with page 6 or just in
2 general?

3 Q Just in general, what is it?

4 A Well, this is my attempt to clearly identify information
5 that I did not receive that is critical for Two Rivers to have
6 specifically regarding credit card disbursements with no
7 supporting documents.

8 Q Now, if we look at page 6 of the Exhibit 128, can you
9 just tell us what that is.

10 A This is a letter to me.

11 Q Who is it from?

12 A Paul Schafhauser.

13 Q And you say it's a letter, but was it, in fact, an e-mail
14 to you?

15 A I would assume it's an e-mail yes, yes. I don't remember
16 ever getting an actual letter, although I may have. I don't
17 remember, really.

18 Q And did you -- you received this?

19 A Yes.

20 Q You have seen it before?

21 A Yes.

22 Q And without reading it word for word, can you tell us
23 what it was that Mr. Schafhauser was asking you in this
24 letter?

25 A He's asking me? Well, in the middle paragraph, he's

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1 asking me if I am in possession of Two Rivers's signed tax
2 returns, and then specifically any books and records that are
3 missing, in quotes. And he's asking me if I -- "Please also
4 advise if you are represented by Carol and Jay Nelkin or other
5 counsel, in which case he will direct this question to them."
6 Those are --

7 THE COURT: Instead of having the witness read
8 documents that I have got in front of me, can you ask
9 questions that aren't on the page.

10 MS. NELKIN: Yes, Your Honor.

11 THE COURT: Thank you.

12 Q Mr. Papa, did you respond to Mr. Schafhauser's letter or
13 e-mail?

14 A I believe I did.

15 Q All right. And at the time you responded to this, could
16 you tell us whether or not you indicated to him that you were
17 missing documents?

18 A Yes. I indicated to him that I was missing documents and
19 I -- either in this e-mail or a subsequent e-mail I provided a
20 specific schedule that was not meant to be all-encompassing,
21 but it was a specific schedule for those credit cards
22 disbursements that I had no support documentation for.

23 Q And once you did that, what happened?

24 A I don't think I ever heard back from him.

25 Q Were you ever able to reconcile the credit card matters?

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1 A When you say "reconcile," I'm not sure what you mean by
2 "reconcile." I never got supporting documentation for credit
3 card disbursements, if that's what you mean by "reconcile."

4 Q Did you ultimately advise Mr. Schafhauser that there was
5 a significant dollar amount of disbursements that you could
6 not account for?

7 A Yes.

8 Q Okay. Tell us what that was all about, how that worked.

9 A Well, it's right on page 1, "Please be advised that the
10 original million four, there's a total of a million 158
11 unaccounted for."

12 Q And were these the credit card disbursements that you
13 were talking about?

14 A Yes.

15 Q Did you ever get the documentation that supported what
16 was remaining missing at the time you wrote this e-mail?

17 A No.

18 Q What did you respond to Mr. Schafhauser's inquiry about
19 whether or not you were represented by counsel?

20 A What did I respond?

21 Q Yes.

22 A I'm not sure.

23 THE COURT: Again, I can read it on the page.

24 MS. NELKIN: Okay.

25 THE COURT: Go on to something that's not on the

1 page.

2 A I requested to be represented by counsel several times
3 and I was turned down I believe once by Mr. Schafhauser in a
4 phone conversation that was or an e-mail. I don't remember
5 exactly which. But I repeatedly said I should not be doing
6 this on my own. These are legal documents. I should be
7 guided. Someone ought to be representing Two Rivers Coffee.
8 Who represents me and who represents Two Rivers Coffee? And
9 it was always denied.

10 THE COURT: Does it interfere in any way with --
11 leaving aside concerns that you may have because you are not a
12 lawyer, is there any way in which the fact that Two Rivers
13 doesn't have counsel impedes your work or the work of Two
14 Rivers?

15 THE WITNESS: Well, I have a current matter right
16 now that I'm looking for a direction on.

17 THE COURT: Yes.

18 THE WITNESS: The tax returns need to be authorized
19 by the tax matters partner.

20 THE COURT: Yes.

21 THE WITNESS: The tax matters partner is
22 Mr. Friedman; is he still the tax matters partner or not?

23 THE COURT: So you need guidance on that as a legal
24 matter?

25 THE WITNESS: Right. There's things that surface in

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1 the day-to-day.

2 Q Mr. Papa, did Mr. Friedman have an office at Two Rivers?

3 A Yes.

4 Q And did he have computers in that office?

5 A Well, he had at least a computer. I don't know for a
6 fact if it was plural.

7 Q At some point in time, did you become -- did you receive
8 the key to that office?

9 A I received a key from this employee Criseidy Molina,
10 which is the key to that office, yes.

11 Q When were you given that key?

12 A It was shortly after the TROs, I would guess, the week of
13 December 10th, maybe. It was right around then.

14 Q And have you taken steps to make sure that that computer
15 has remained as it was at the time of the preliminary
16 injunction?

17 A Yes. That office has remained locked and no one goes in
18 that office unless I'm present, to my knowledge. Again, if
19 there's -- I received a key. If there are other keys, I don't
20 know that for a fact.

21 Q You don't have any reason to believe that any -- well, do
22 you have any reason to believe that either of the trial groups
23 have a key to that office?

24 A No. I'm fairly certain that they don't. But again, I
25 did not receive Emil's key. I received a key that he had

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1 given to an employee.

2 Q Do you have any reason to believe that Mr. Koenig has a
3 key to that office?

4 A I believe he does not.

5 Q But do I understand from your testimony that
6 Mr. Friedman's key is still unaccounted for?

7 A Well, I have no knowledge of his key. I did not receive
8 per se his key. Again, I received a key that he had given to
9 an employee who he allowed to have access to his office. No
10 one else had access to his office except this one employee who
11 helped him prepare payroll.

12 Q Mr. Papa, have you at any time ever seen Mr. Friedman in
13 the possession of a laptop computer?

14 A Yes.

15 Q When did you see it? What would be the occasion?

16 A I don't remember a specific date, but from time to time
17 when he came into the building to do his work, he would be
18 carrying what looked like to be a laptop and amongst the
19 things he was carrying.

20 Q And can you give us some approximate date as to when the
21 last time you would have seen him carrying that laptop would
22 be?

23 A No.

24 Q Well, would it have been in 2015?

25 A Yes.

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1 Q Mr. Papa, are there -- are there any items that you would
2 consider the books and records of Two Rivers that you still do
3 not have access to today?

4 A Well, yes, certainly the payroll records that were in
5 Launch Coffee and all of the vendor billings that were
6 electronically stored in Launch Coffee.

7 Q Anything else?

8 A Those are the two biggest items that come to mind.
9 Again, I -- I -- I -- I did not -- I don't profess to, you
10 know, have examined all the documents and say that, you know,
11 of the five thousand checks we cut in the last four years I
12 have ever invoice that I'm required to have. But I know I
13 don't have access to Launch Coffee and I know that information
14 was in Launch Coffee.

15 Q Were -- were all the checks that were written on behalf
16 of Two Rivers entered into Launch?

17 A Yes.

18 Q So because you don't have access to Launch, you don't
19 have access to those checks?

20 A Well, yes. I don't have access to the checks, but with
21 the exception of payroll, those checks were entered into
22 QuickBooks. So I do have a duplicate copy of the check in
23 QuickBooks except for payroll because that was entered in a
24 summary fashion.

25 Q Do you know whether or not you are required by law to

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1 maintain those payroll records?

2 A We are. We are required to maintain payroll records
3 indicating name of employee, date paid, hours paid,
4 calculation of wages. We are required I think for six years
5 in New Jersey to have access to those records. And we do not
6 have that.

7 MS. NELKIN: Your Honor, if I could just have a
8 moment?

9 THE COURT: Yes.

10 Q Mr. Papa, do you know if information concerning loans to
11 Two Rivers would have been maintained in the Launch system?

12 A Yes, it was.

13 MS. NELKIN: Your Honor, we pass the witness.

14 THE COURT: Okay. We will take a break in just a
15 moment, our mid-afternoon break and we will start with cross
16 after the break.

17 When you say "loan information," what kind of
18 information about loans is kept in Launch?

19 THE WITNESS: Well, I believe Carol is referring to
20 loans that Emil had made to the company. The receipt of the
21 loan is recorded in Launch as it is recorded in QuickBooks.

22 THE COURT: Do you have the information in
23 QuickBooks?

24 THE WITNESS: Yes.

25 THE COURT: So are you lacking access to information

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1 about any loans to or from Two Rivers?

2 THE WITNESS: Not the primary loan. If there are
3 other loans that is being alluded to, I don't have any
4 information about any other loans. But the main loan that
5 funded the company --

6 THE COURT: Yes.

7 THE WITNESS: -- I don't believe --

8 THE COURT: But any other loans, would other loans
9 be on Launch? I'm just trying to understand if there's
10 information that you believe you don't have because it's
11 resident only on Launch.

12 THE WITNESS: I don't -- well, I don't believe so.

13 THE COURT: Okay.

14 THE WITNESS: If there's something I'm missing, I'm
15 missing it.

16 THE COURT: You don't know what you don't know.
17 Great. Go ahead.

18 MS. NELKIN: If I could just ask a follow-up
19 question to what you asked, Your Honor?

20 THE COURT: Yes.

21 BY MS. NELKIN:

22 Q Do you know, do you have any way of knowing whether or
23 not the information that you have on QuickBooks matches the
24 loan information that's on Launch?

25 THE COURT: I think that's basically what he just

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1 said. You don't know what you don't know.

2 A Well, I don't know for a fact it matches. I believe it's
3 recorded in Launch -- in Launch and in QuickBooks. But, you
4 know, if there are other loans recorded in Launch Coffee, I
5 wouldn't know about them per se because I'm not looking for
6 that information in Launch. I am -- I'm not relying on Launch
7 to determine what is the loan payable to Emil.

8 THE COURT: I'm not trying to cut you off.

9 MS. NELKIN: No further questions, Your Honor.

10 THE COURT: All right. We will take our break. We
11 will return in 15 minutes.

12 (Recess taken.)

13 THE COURT: All right, who would like to question
14 first?

15 MR. SCHAFHAUSER: I will volunteer, Your Honor.
16 Thank you.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MR. SCHAFHAUSER:

20 Q Good afternoon, Mr. Papa. You -- by the way, we have
21 corresponded. My name is Paul Schafhauser.

22 A Hi.

23 Q We have corresponded. We haven't spoken by phone before,
24 have we?

25 A I don't recall.

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1 Q Okay. You began at Two Rivers, I believe I heard you say
2 June 2013, correct?

3 A Yes.

4 Q Okay. What were you doing before you joined Two Rivers?

5 A The immediate 15 months prior I was not employed.

6 Q And before that period of time, what were you doing?

7 A I believe right then, before that I was a CFO at Marquis
8 Who's Who, a publishing company.

9 Q And how is it that you came to be familiar with Two
10 Rivers Coffee?

11 A I was contacted by Mayer Koenig to come on an interview
12 for a CFO position.

13 Q And how did you come to be in contact with Mr. Koenig?

14 A Well, he found me on Indeed and then he called me.

15 Q Indeed is --

16 A Indeed is a job site aggregator.

17 Q Very well. And he called you and you were ultimately
18 hired, correct?

19 A Yes, yes.

20 Q Okay. Now at the time that you were hired, who were the
21 members of Two Rivers Coffee?

22 A Emil Friedman, Eugene Schreiber, Steven Schreiber and
23 Mayer Koenig, to the best of my knowledge. At the time I was
24 hired, they were introduced to me as such, but I saw no
25 paperwork to prove that. I was a brand new hire.

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1 Q Very well. Before we go forward, did you do any
2 preparation for your testimony here today?

3 A I met with my counsel.

4 Q Okay. Other than your meeting with counsel, did you
5 speak with anyone else about this hearing or this lawsuit
6 prior to today?

7 A Well, I was carrying --

8 THE COURT: About this lawsuit?

9 MR. SCHAFHAUSER: I'm sorry?

10 THE COURT: About the lawsuit?

11 MR. SCHAFHAUSER: Withdrawn.

12 Q Did you speak with anyone about your testimony or this
13 evidentiary hearing other than your counsel? I'm not asking
14 to you communications with Mr. Rosenblatt.

15 A Well, I was -- they were preparing last night. I was
16 waiting all day to testify. After the hearing they came out
17 and asked me some questions for them to prepare for today.

18 Q Okay. Did you review any documents before -- in
19 preparation for your testimony?

20 A With my counsel or with anybody? I mean --

21 Q With anyone, although I'm not asking for any
22 communications with your counsel, just so --

23 A Okay.

24 Q Okay. So could you did you review any documents?

25 A Ever?

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1 Q No, in preparation -- withdrawn.

2 I assume -- well, withdrawn. Did you --

3 THE COURT: Could we get to substantive matters?

4 MR. SCHAFHAUSER: Very well.

5 Q When did you first meet Mr. Steven Schreiber?

6 A When I interviewed.

7 Q Who was in the interview with -- with Mr. Koenig and
8 Mr. Steven Schreiber?

9 A The interview I had in per se was the four members of --
10 what I perceived to be the four members of the LLC and Mike
11 Devine.

12 Q All four of them and Mr. Devine were in the room
13 together?

14 A Yes, yes.

15 Q And what did they tell you about your duties and
16 responsibilities would be?

17 A They wanted me to professionally prepare financial
18 statements and to install systems and controls that would
19 allow such statements to be generated in accordance with
20 generally accepted accounting principles. And they wanted to
21 make sure I wasn't going to wear a tie and just be a bean
22 counter.

23 Q Did you have an understanding at the time that you were
24 hired that there was an existing CPA who was handling CPA
25 functions for the company?

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1 A You will have to describe CPA functions, but I'm not
2 aware of that term.

3 Q Okay. Let me re-characterize it. Did you have an
4 understanding when you were hired that someone else would be
5 acting as the company's outside certified public accountant?

6 A Yes, I understood that Mike Devine would prepare the tax
7 returns.

8 Q Now, I think you said one of the tasks that you were
9 going to handle was installing systems. What kind of systems
10 did you understand would be installed?

11 A Financial systems, accounting systems, management
12 systems.

13 Q And once you began, were there any systems that you
14 installed other than what you have already testified to in
15 response to Ms. Nelkin's questions?

16 A Well, when I began, the company was using QuickBooks on
17 Online. I upgraded that to QuickBooks Enterprise. I
18 subsequently added an add-on called Misys to better control
19 the manufacturing and inventory.

20 Q So let me see if I understand. The company when you
21 began was using QuickBooks Online, yes?

22 A Yes.

23 Q And you, when you say you upgraded it, what were the
24 features that were enhanced when the company went to
25 QuickBooks Enterprise?

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1 A If I could back up, they were also using a system called
2 Corporate something which I'm not too familiar with it. It
3 was another home-grown system. The difference between
4 QuickBooks Online and QuickBooks Enterprise is primarily
5 inventory control.

6 Q You mentioned "Corporate" and you said you are not too
7 familiar with it. Have you ever used the Corporate system?

8 A I received reports from the Corporate system. I have
9 never entered data into the Corporate system.

10 Q And what -- from whom would you receive reports from the
11 Corporate system?

12 A Sonia.

13 Q Other than receiving reports from Ms. Rivera, did you
14 utilize the Corporate system in any way since -- during the
15 time that you've been at Two Rivers?

16 A Well, I utilized the reports from that system to prepare
17 the financials for -- to restate both 2012 and to prepare
18 2013.

19 Q When you say "restate," please explain what you mean by
20 restating the financials.

21 A I was given a financial statement that was prepared by
22 Mike Devine which purported to be the financial statements for
23 the year 2012. Upon examination and review, I determined that
24 those statements were inaccurate and I had to correct them
25 which is commonly referred to as restating the net income for

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1 the year for the company.

2 Q And you did that for 2012 and 2013, correct?

3 A I did not restate 2013 financial statements. I restated
4 2012.

5 Q Oh, okay, 2012. Other than restating the 2012 financial
6 statements, did you use the corporate system for any other
7 purpose while you've been at Two Rivers?

8 A No, not that I can think of right now.

9 Q All right. Do you have an understanding as to whether
10 the information that was on the corporate system was
11 transferred at some point to the Launch Coffee system?

12 A I have had some discussion and some understanding of
13 that, and I do not believe it was transferred.

14 Q Okay. With whom did you have those discussions?

15 A Primarily Yossi.

16 Q Could you tell me what the discussions were about that
17 item.

18 A That the way he was describing the transfer to me was,
19 once again, inadequate in that he was not transferring
20 historical information. He was only transferring open
21 balances, meaning unpaid vendor bills, that's it, and checks
22 that were not cleared or outstanding checks. So once again,
23 we would not have a complete history in any one system. And I
24 said that's not good. We need to have complete historical
25 information in one system. You need to transfer this data.

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1 Q And when did you have this conversation with Yossi?

2 A When he was shutting down corporate and they were
3 migrated to Launch. I don't remember the exact dates.

4 Q Could you give me an approximate time period?

5 A Probably mid-2014, I would guess if I had to.

6 THE COURT: Sorry to interrupt. Are you saying that
7 Corporate only had open balances to migrate or that only a
8 subset of the information on corporate was migrated?

9 THE WITNESS: Only a subset was migrated.

10 THE COURT: Got it.

11 Go ahead, please.

12 Q Now, at some point, was an effort made if you know, to
13 transfer the data on the Launch system to the QuickBooks
14 Enterprise system?

15 A Data was never transferred from Launch Coffee. If you
16 are referring to an electronic transfer, data was never
17 transferred from Launch into QuickBooks.

18 Q All right. Let me -- let me ask, then, a follow-up
19 question. I mangled the question. Was information
20 transferred or input on to the QuickBooks Enterprise system
21 that had previously been located on the Launch system?

22 A Yes.

23 Q And when was that done?

24 A It was done throughout 2013 and throughout 2014. It was
25 done throughout.

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1 Q And who did that?

2 A Who? Well, I directed it and I certainly entered some of
3 it myself. But again, I would run reports from Launch and I
4 would determine what needed to be entered into QuickBooks
5 except for payroll. Payroll I handled differently.

6 Q So you made a determination based on what you ran in
7 Launch as to what needed to be put into QuickBooks?

8 A Yes.

9 Q Okay. And if you determined that it was necessary
10 information, you then transferred it into QuickBooks, correct?

11 A I entered it.

12 Q I'm sorry; you entered it. If the information was
13 necessary, you would have entered it into the QuickBooks
14 Enterprise system?

15 A For disbursements.

16 Q Very well. And was there a gentleman by the name of
17 Isaac? I don't know his last name.

18 A Yes.

19 Q What was Isaac's last name?

20 A Benkowski (ph).

21 Q And what was his role?

22 A He was hired by Emil and Yossi to attempt to further have
23 Launch Coffee either duplicate QuickBooks or replace
24 QuickBooks. So he entered information both into QuickBooks
25 and Launch Coffee, specifically orders and applying cash from

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1 customers to invoices. Prior to him, Launch Coffee had no
2 accounts receivable information and no orders.

3 Q And when -- when you say "prior," when he began and did
4 his tasks, did Launch then get the information that you just
5 referred to input on its system?

6 A He was attempting to do that, although as far as I could
7 tell he never was successful.

8 Q Did -- did you ask him to input information on the
9 QuickBooks Enterprise system?

10 A Yes.

11 Q And did he do so?

12 A Yes.

13 Q And he did so under your supervision?

14 A On QuickBooks, yes.

15 Q And is the information, as best as you know, on
16 QuickBooks accurate?

17 A Yes.

18 Q I take it you rely on the information that's available on
19 QuickBooks, correct?

20 A Yes.

21 Q And for purposes -- well, let me go back. We talked
22 about Mr. Devine's role. Mr. Devine prepared tax returns for
23 several years. I think you said 2012, '13 and '14, correct?

24 A Yes.

25 Q For purposes of delivering information to Mr. Devine to

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1 prepare the tax returns, is it correct that the information
2 that you delivered to him was based on what existed on the
3 QuickBooks Enterprise system?

4 A Yes.

5 Q For purposes of preparing financial information for the
6 members of the company, did you also deliver to them
7 information from the QuickBooks Enterprise system?

8 A Yes.

9 Q You mentioned mice assist earlier and I'm not familiar
10 with that, so forgive me. What is Misys? Could you describe
11 its functions.

12 A Misys is a poor-man's Enterprise resource system. It
13 attempts to control inventory, schedule jobs, determine what
14 material to order, how to run your production. It is an
15 extremely low-end product.

16 Q And when was Misys implemented at Two Rivers?

17 A October of 2014.

18 Q Why was it implemented?

19 A Because it was needed.

20 Q And at whose direction was it implemented?

21 A Mine.

22 THE COURT: May I just --

23 MR. SCHAFHAUSER: Of course.

24 THE COURT: -- understand. I think you talked about
25 three different ERPs that were being used, Launch, Quicken and

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1 now Misys. Can you just walk me through how they overlap in
2 terms of functionality.

3 THE WITNESS: Well, Launch Coffee was intended to be
4 an ERP, but it never got there. So let's take that out of the
5 equation.

6 THE COURT: Okay.

7 THE WITNESS: QuickBooks is an ERP system, but it's
8 inadequate. So Misys is a little bit like an add-on module
9 that just handles ERP functions and QuickBooks does accounts
10 payable, accounts receivable. So Misys feeds into QuickBooks.

11 THE COURT: Okay. But they don't have overlapping
12 functions?

13 THE WITNESS: No.

14 THE COURT: Okay.

15 THE WITNESS: Because I disabled the overlapping
16 piece that was in QuickBooks.

17 THE COURT: Okay.

18 All right, go ahead, I'm sorry to interrupt.

19 MR. SCHAFHAUSER: No problem, thank you, Judge.

20 BY MR. SCHAFHAUSER:

21 Q Judge Orenstein asked you questions about ERPs and I was
22 actually going to go there next. You mentioned a number of
23 ERPs and my notes had you mentioned QuickBooks Enterprise
24 which we talked about. There was also Sage. What is Sage?

25 A Well, Sage is a company that produces many different

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1 levels of enterprise resource planning-type systems. Some are
2 more expensive, less expensive. They are industry-specific.
3 There's a whole suite of products that are available to a
4 company.

5 Q Was there a time when you wanted to implement a Sage
6 system at Two Rivers?

7 A I was a little reluctant in October of 2013 to implement
8 Sage because it was a little too expensive, I thought, for our
9 taste, at least the one being discussed.

10 Q What was the one that was under discussion at the time?
11 I'm sorry; what was the cost of the one under discussion at
12 the time?

13 A That one was maybe a hundred thousand that was being
14 thrown around.

15 Q And who was throwing that number around?

16 A I believe Mayer had some preference for that system.

17 Q So Mr. Koenig wanted to go to Sage, but you learned that
18 the cost was a hundred thousand and you were against it?

19 A In October 2013, yes.

20 Q Did there come a point in time when you revisited going
21 to a Sage system?

22 A Yes.

23 Q When was that?

24 A Recently. We did an evaluation -- let me think for a
25 second here -- the end of the 2015 into early 2016 we

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1 reevaluated it. And I had reevaluated -- I had proposed other
2 lower-cost options during the whole debate about whether or
3 not to custom-right Launch. And that's how Misys surfaced as
4 a low-end alternative suitable for an early-stage company like
5 ours.

6 Q Now, you say you reevaluated Sage in 2015, early 2016.
7 Who was involved in reevaluating whether to go to the Sage
8 system?

9 A The members of the LLC and myself.

10 Q Was this before the lawsuit began or after the lawsuit
11 began?

12 A When you say "the lawsuit," I don't know which one you
13 are referring to or what you are referring to.

14 Q That's a fair point. Let me go back a step. Do you
15 recall that a temporary restraining order was entered in our
16 about December, mid-December 2015?

17 A Yes, yes.

18 Q Okay. The discussion about Sage, did that occur before
19 or after the TRO was entered?

20 A The discussion about an alternative to Launch Coffee was
21 ongoing. It never really stopped because Launch Coffee was
22 never going to happen, I believed. So we had to be prepared
23 for an alternative. So I was always evaluating the
24 marketplace for alternatives. I could not leave the company
25 totally at risk for not having a system to manage its affairs.

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1 Q What do you mean by "Launch Coffee was never going to
2 happen"?

3 A It was never going to be a fully implemented ERP system.

4 Q It was a system on which you didn't rely, right?

5 A No, that is not true. I relied on it for information
6 regarding disbursements, purchases and payroll.

7 Q Now, did -- did you -- you -- did Two Rivers ever make
8 the decision to implement the Sage system?

9 A No, we did not.

10 Q Why not?

11 A Because we found a better alternative.

12 Q What was the better alternative?

13 A Plex.

14 Q Plex?

15 A Plex, P-L-E-X.

16 Q And when was Plex implemented?

17 A It's being implemented right now.

18 Q When was it -- when was the decision first made to
19 implement Plex?

20 A I believe February of 2016.

21 Q And what is Plex?

22 A Plex is an ERP system that is specifically suited to food
23 and beverage manufacturers.

24 Q And who was involved in making the decision to implement
25 Plex?

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1 A Well, myself, and Mayer and Eugene, certainly.

2 Q And was Steven Schreiber also involved in that
3 determination?

4 A I don't think he participated.

5 Q And again, I'm asking obtuse questions because I don't
6 know this field, but did someone order a program called Plex
7 at some point?

8 A You are going to have to do better than that.

9 Q Okay, I will try again. At some point, a contract was
10 entered with the owner of the Plex system, yes?

11 A With the company at Plex, yes.

12 Q With the company?

13 A Yes.

14 Q And when was that contract entered into?

15 A February of 2016.

16 Q And what was the amount of that contract?

17 A It's an annual subscription for the first year, I believe
18 is \$58,000 because it was prorated. And there was an
19 implementation fee, a one-time fee of 125,000.

20 Q And the \$125,000 fee has been paid?

21 A It is in the process of being paid. It's installments.
22 It's pay as you go.

23 Q Okay. So let me see if I understand. The annual fee is
24 58,000 and that's a recurring fee each year, correct?

25 A Correct.

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1 Q And the one-time fee is being paid over time, correct?

2 A Over the implementation period which is six months.

3 Q So do I have it correct that the \$125,000 sum is being
4 paid in six equal installments totaling \$125,000?

5 A Except for the equal part. They are not six equal
6 installments. It's monthly billing. So it depends on what
7 they do for -- in a given month.

8 Q Now, under the contract, once the system is actually
9 installed, is there also a monthly maintenance or usage fee?

10 A No.

11 Q And who was responsible for implementing the Plex system?

12 A I am.

13 Q Okay. Do you have anyone assisting you in that process?

14 A Yes.

15 Q Who do you have assisting you in that process?

16 A Well, in addition to Plex, I have the staff of the
17 company. It's all the key players in the company.

18 Q Who are the key players in the company who are helping
19 you on Plex?

20 A The core committee consists of the plant manager, Larry
21 Cruz, Vanessa who works for me in order entry, Brian who does
22 IT, Yehuda Bears (ph) who does shipping, Mercedes who does
23 logistics and I think Wardes (ph) who assists Larry. That's
24 the core committee who is implementing Plex.

25 Q I think you said Plex is being implemented right now.

V. Papa - Cross/Mr. Schafhauser

1255

1 What is the process -- what stage of the process is the
2 implementation of at this moment?

3 A Well, Monday, August 8th is our second readiness
4 assessment. If we pass that, we will implement it
5 August 22nd.

6 Q And what information will be available as of August 22nd
7 if the second readiness assessment is successful?

8 A Can you repeat that, please? I'm sorry.

9 Q Sure. Assuming that the second readiness assessment is
10 successful --

11 THE COURT: This sounds like a fascinating topic for
12 how best to run things going forward. I'm missing the point
13 of how it relates to the subject matter of the hearing.

14 MR. SCHAFHAUSER: Well, a principal question would
15 be what information is available to the company at this point
16 that's being put on to the Plex system. To the extent that
17 it's available and the company is able to rely on it --

18 THE COURT: Why don't we talk about what's
19 available. But the ins and outs of a system that's new
20 doesn't strike me as -- I'm just not getting it. So if you
21 could move on, I would appreciate it.

22 MR. SCHAFHAUSER: I just wanted to ask what
23 information is being put on Plex.

24 THE COURT: This will be the last question about
25 Plex and we will move on.

1 MR. SCHAFHAUSER: I just wanted to ask what
2 information is being put on place.

3 THE COURT: This will be the last question about
4 Plex and then move on.

5 BY MR. SCHAFHAUSER (cont'd.):

6 Q What information is being put on Plex for use by the
7 company?

8 A It would be our item file. It would be our inventory.
9 It will be our bills and material. It would be invoice, open
10 invoices, customer invoice, open vendor invoices. Open
11 purchase orders.

12 Q Okay. Now, we'll move on from Plex. The Court had asked
13 me and I, of course, will comply. This is my question.

14 The information that you just described, where is that
15 information now located?

16 A In QuickBooks.

17 Q So all of the information that you just described is
18 available on QuickBooks?

19 A Yes.

20 Q You mentioned that another of your tasks when you joined
21 Two Rivers was the preparation of financial statements; right?

22 A Yes.

23 Q Okay. What financial statements do you prepare as part
24 of your duties and responsibilities for Two Rivers at the
25 present time?

V. Papa - Cross/Mr. Schafhauser

1257

1 A Well, on an annual basis, I prepare a statement of income
2 and expense, a balance sheet, and a statement of cash flows.

3 Q Do you prepare any monthly reports?

4 A No.

5 Q Do you prepare any quarterly reports?

6 A On occasion.

7 Q What types of reports?

8 A The same three. The same big three.

9 THE COURT: Financials, balances, and cash flow?

10 THE WITNESS: Income statement, balance sheet, cash
11 flow. Those are the big three.

12 Q Did you disseminate to the members of Two Rivers?

13 A On occasion.

14 Q When did you last prepare a quarterly report?

15 A I did one for 2016, for March and June, so I did a
16 six-month statement about two weeks ago.

17 Q Let me see if I understand. You did one for March and
18 you did another one for June?

19 A At the same time.

20 Q So, in June, you did two statements. One for the first
21 three months of the year and another for the second three
22 months of the year?

23 A In July.

24 Q In July?

25 A Yes.

V. Papa - Cross/Mr. Schafhauser

1258

1 Q And to whom did you provide those statements?

2 A We had a meeting with Eugene, Mayer, and I believe Steven
3 was present for that.

4 Q And you gave Eugene, Mayer, and Steven of the copy of the
5 quarterly statements?

6 A Yes.

7 Q Did he ever provide those statements to Mr. Friedman?

8 A No.

9 Q Why not?

10 A Because in the past, I would e-mail Mr. Friedman and he
11 would either say, don't e-mail me, I don't read them, or call
12 me. I don't call so I just didn't send them. There's no real
13 reason.

14 THE COURT: If he wants them, do you problem any
15 giving them?

16 THE WITNESS: I have no problem. Recently, in
17 March, he asked for me for an estimate for his tax returns and
18 I provided information.

19 THE COURT: So you'll work that out.

20 Q What other did you provide any weekly information to the
21 members of Two Rivers?

22 A Well, we certainly run our accounts payable which is
23 unpaid bills, and we run our accounts receivable which is
24 uncollected receipts. We run those pretty much daily, either
25 the members themselves run them or I run them and we discuss

V. Papa - Cross/Mr. Schafhauser

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1 it.

2 Q And you do that on pretty much a daily basis during the
3 week?

4 A Well, certainly, with Eugene. He and I discuss things
5 constantly. Less so with Mayer and less so with Steven.

6 Q You probably anticipated the next question.

7 Would you have an objection providing them to
8 Mr. Friedman if he asked for those?

9 A Well, I would without counsel.

10 THE COURT: Sorry.

11 MR. ROSENBLATT: This is not something he should say
12 with something production of documents from the company. This
13 should be something that counsel should look at. So if he
14 makes an application --

15 THE COURT: From the perspective of consistency with
16 past practice or any way it would interfere with your
17 abilities I'll let you answer, but it doesn't commit the
18 company in anything.

19 MR. ROSENBLATT: Okay. Thank you.

20 THE WITNESS: I have no problem providing
21 information to whoever asks for it if I'm allowed to again.

22 Q All right. Thank you. The third responsibility that you
23 mentioned was the implementation of financial controls. What
24 financing controls have you ever implemented while at
25 Two Rivers?

V. Papa - Cross/Mr. Schafhauser

1260

1 A Well, the primary one I instituted was recognition of
2 revenue based upon ship date so that we would not improperly
3 recognizing revenue i.e. prior to shipping.

4 THE COURT: You'll have to explain that one to me.
5 I don't understand it.

6 THE WITNESS: Prior to my arrival, they would ship
7 something tomorrow but recognize revenue today. So they were
8 cheating, they didn't earn that revenue.

9 THE COURT: They'd say they had the money before the
10 product had been shipped for which they would then receive
11 payment?

12 THE WITNESS: The sale, not so much the money. They
13 could inflate their sales. They don't actually earn the right
14 to recognize the revenue on the financial statements until
15 they ship the product.

16 THE COURT: Okay.

17 THE WITNESS: It was a very loose cut off between
18 when it was shipped and when it was reported on the financial
19 data. So companies could play games with their revenues.

20 THE COURT: And you changed it from recognizing it
21 as revenue before shipment?

22 THE WITNESS: Only when it ships.

23 THE COURT: Only when it ships.

24 What is the relationship between either of those
25 periods and when the money that is revenue actually comes in?

V. Papa - Cross/Mr. Schafhauser

1261

1 THE WITNESS: Well, the money that comes is against
2 our receivables, that's not quite revenue in accounting,
3 that's just cash receipts against a receipt.

4 THE COURT: I'm showing you my ignorance.

5 Go ahead sorry.

6 EXAMINATION BY

7 MR. SCHAFHAUSER:

8 (Continuing.)

9 Q Thank you. You also mentioned payroll earlier.

10 Did you receive pay stubs with respect to the payments
11 that were being made to Two Rivers's employees?

12 A Paper copies?

13 Q Yes, you did.

14 A Yes.

15 Q What information was on those pay stubs?

16 A I don't remember exactly.

17 Q Well, putting aside what you remember today, did you
18 review the pay stubs at the time you received them?

19 A No.

20 Q Why not?

21 A I had no responsibility for payroll, and the pay stub is
22 a rather, I'll say, irrelevant document. Why would I review
23 122 pay stubs every week?

24 Q Let me ask you this. I don't want to argue relevance
25 with you, Mr. Papa. This is my question.

V. Papa - Cross/Mr. Schafhauser

1262

1 Is it correct that whatever the documents have on them
2 you have the pay stubs in your possession, yes?

3 A I have copies of pay stubs but those are not the payroll
4 records that we're required to maintain by law.

5 THE COURT: I'm missing the difference. What is it
6 you don't have for payroll purposes?

7 THE WITNESS: I don't have a comparison of the hours
8 that the employee punched in or out versus the hours that were
9 paid either overtime or not, or if they were paid for sick
10 time or paid for holiday time. I don't have that -- those
11 payroll records.

12 THE COURT: Well, you talk about comparison between
13 sets of information. What primary documents don't you have
14 that you need to prepare that information?

15 THE WITNESS: I'm not preparing it per se. I'm
16 required to retain it.

17 THE COURT: Okay. Are there documents that somebody
18 has that you don't have?

19 THE WITNESS: Those documents are electronically
20 stored in Launch Coffee.

21 THE COURT: Okay. Go ahead.

22 Q In addition to what's on the Launch, you do have the pay
23 stubs for whatever value they have to you; correct?

24 A I have pay stubs, yes.

25 Q Okay. Now, has the lack of access to the payroll records

V. Papa - Cross/Mr. Schafhauser

1263

1 on the Launch prevented you from submitting any tax or
2 financial statement on behalf of the company?

3 A Well, most of those -- that information that you're
4 referring to was already submitted by Mike Devine through
5 December 4th. From January 1st, I went to an outside payroll
6 provider on Paychex. There were three weeks in that gap that
7 I asked Mike to, as a favor to me, produce the return. So
8 there are no outstanding issues with remitting payroll taxes
9 properly that I'm aware of.

10 Q So which outside vendor did you go to?

11 A Paychex.

12 Q And Paychex was able to give you the information you
13 needed to make the appropriate filings?

14 A Paychex generates the information starting in 2016. They
15 make the filing, I do not.

16 Q So Paychex made the filings for payroll taxes?

17 A For 2016, yes.

18 Q Very well. And before 2016, Mr. Devine was responsible
19 for the payroll tax filings; correct?

20 A To the best of my knowledge, yes.

21 Q So there was no gap period for any payroll taxes were not
22 reported or accounted for; correct?

23 A Correct.

24 THE COURT: I'm sorry, now I'm confused again.

25 You said you're missing some payroll information

V. Papa - Cross/Mr. Schafhauser

1264

1 that's only resident on Launch.

2 THE WITNESS: Yes.

3 THE COURT: But Paychex is generating payroll tax
4 records.

5 THE WITNESS: Yes.

6 THE COURT: How is it able to do that without the
7 information that you need that's on Launch?

8 THE WITNESS: Because the information that Paychex
9 is using is current hours which I've captured and entered into
10 Paychex. Paychex is preparing the current payroll and
11 remitting taxes from January 1st forward.

12 THE COURT: Okay.

13 THE WITNESS: Launch did it prior.

14 THE COURT: So the information you don't have from
15 Launch is historical?

16 THE WITNESS: Yes.

17 THE COURT: Okay. You need that for what.

18 THE WITNESS: Because we're required by law to
19 maintain records of who we paid, hours, et cetera. So it's
20 not a question of reporting or remitting.

21 THE COURT: That's where I was --

22 THE WITNESS: It's retained.

23 THE COURT: Sorry.

24 EXAMINATION BY

25 MR. SCHAFHAUSER:

1 (Continuing.)

2 Q So let me see if I understand.

3 If access to Launch were restored in some way, then the
4 issues regarding the payroll records would be moot; correct?

5 A If access is restored, and if the data is there, then,
6 yes.

7 Q You mentioned I think it was Meglio or DiMeglio?

8 A Meglio, M-e-g-l-i-o.

9 Q Meglio & Associates. And when were they retained?

10 A Probably January of 2016.

11 Q And they are the outside accountants for the company now?

12 A Yes.

13 Q Was a contract entered into with Meglio?

14 A There was an engagement letter signed, yes.

15 Q Incidentally, are you aware as to whether all of the
16 members of Two Rivers authorized the engagement of Meglio &
17 Associates?

18 A No. All of the members did not authorize to.

19 Q Who authorized the retention of Meglio & Associates?

20 A I think it was Eugene and Mayer.

21 Q And did Steven Schrieber authorize the retention of
22 Meglio & Associates?

23 A No.

24 Q Going back to the new system that is being implemented.

25 Did Steven Schrieber authorize the contract for the new

V. Papa - Cross/Mr. Schafhauser

1266

1 financial settlement that's being implemented?

2 A No.

3 Q Do you know whether Mr. Friedman authorized that
4 contract?

5 A I don't think he did.

6 Q What filings has Meglio & Associates prepared to date?

7 A They did the 4th quarter payroll tax return for 2015 and
8 they did the -- reviewed financials for both 2014 and I have a
9 draft version for 2015 awaiting my sign-off.

10 Q And, again, on the payroll tax return that Meglio &
11 Associates prepared, where did that information come from?

12 A It was largely information I obtained from Mike and it
13 was information that was generated for the three pay periods
14 that ended 2015 before Paychex took over. There were three
15 payrolls that I produced out of QuickBooks in that little stub
16 period.

17 Q You testified that you received Ms. Rivera's password
18 some time after the TR0 was entered; right?

19 A Yes.

20 Q Okay. When you received that password, what did you do
21 on the Launch program, if anything?

22 A I don't recall specifically.

23 Q Was there anything on Launch that you needed and you were
24 able to obtain once you had the password that you didn't have
25 previously?

V. Papa - Cross/Mr. Schafhauser

1267

1 A Well, again, for reporting and remitting, not for
2 retaining, yes. I did have an issue that I was currently
3 working on in response to the NLRB that we had an unfair labor
4 practice against us. And they were requiring us to analyze
5 payroll information regarding who worked, what hours, and did
6 your overtime fluctuate and who got laid off, who got fired.

7 That's the kind of information I could readily get
8 out of Launch had I had access to Launch. That's what I don't
9 have in QuickBooks.

10 Q So once you received Ms. Rivera's password, you did have
11 access to that information, right?

12 A Again, I don't remember exactly when I received it and
13 how long it was actually operational before it was turned off.

14 Q Let me start with a second question. When was it turned
15 off?

16 A I don't remember exactly.

17 Q I think you testified on direct your best estimate is it
18 some time in February 2016; correct?

19 A Okay.

20 THE COURT: Just tell me what your best recollection
21 is. My recollection is what you said before February or
22 either side of it.

23 THE WITNESS: Yes, exactly.

24 THE COURT: Any more specificity that you have?

25 THE WITNESS: Not that I'm aware of, no.

V. Papa - Cross/Mr. Schafhauser

1268

1 THE COURT: Go ahead.

2 Q All right. So I want to now place another date before
3 you, Mr. Papa.

4 Could you please turn to exhibit, Plaintiff's
5 Exhibit 101. It's in the biggest of the binders.

6 A Okay.

7 Q Do you recognize this --

8 MR. SCHAFHAUSER: Well, withdrawn.

9 Q Have you seen this e-mail from Mr. Finkel to Mr. Nelkin
10 dated December 15, 2015, prior to today?

11 A No.

12 Q Well, take a look to says, "Cafe 9474." Are you familiar
13 with that password?

14 A I've seen that password, yes.

15 Q When did you first see that password?

16 A I don't remember exactly.

17 Q Okay. Do you know what that password is for?

18 A I believe it's nor Sonya.

19 Q And did you use that password at whatever point you first
20 saw it?

21 A I used the password, yes.

22 Q And is that the password that you are referring to that
23 you received to access her Launch capabilities?

24 A Yes.

25 Q Does this refresh your recollection that you received the

V. Papa - Cross/Mr. Schafhauser

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1 password in or about December 2015?

2 A Well, this not saying I received it.

3 THE COURT: He's asking -- lawyers use this phrase a
4 lot, "Does this refresh your recollection?"

5 You weren't able to pin down a date, and the
6 question that's being asked when he says, "Does it refresh
7 your recollection," you look at this piece of paper now do you
8 remember it?

9 THE WITNESS: If I received it earlier than
10 February, yes. But when I did, that's the problem with
11 guessing. So I will no longer guess.

12 Q I don't want to you guess, Mr. Papa. Let me move on.

13 I want to show another password, though, in the same
14 timeframe. If you look now, there's a smaller binder. It's
15 the Defendant's Exhibit and it's Exhibit 2. It's the first
16 exhibit in that binder.

17 A Okay.

18 Q Are you at Defendant's Exhibit 2, Mr. Papa?

19 A Yes.

20 Q Have you ever seen this e-mail dated December 15, 2015,
21 from me to Mr. Nelkin?

22 A No.

23 Q Already. I just want to ask you about one of the
24 passwords. It says, "Coffee dollar 12 x." Do you see that?

25 A Yes.

V. Papa - Cross/Mr. Schafhauser

1270

1 Q Are you familiar with that password?

2 A No.

3 Q Have you ever used such a password to your recollection?

4 A To the best of my recollection, no.

5 Q The second page of there's another e-mail that refers to
6 "EF18414XY."

7 First of all, before we get to the password, have you
8 ever seen this e-mail from me to Mr. Nelkin dated December 15,
9 2015?

10 A No.

11 Q Okay. Do you recognize the password that I just read out
12 to you?

13 A No.

14 Q Have you ever used a password to access Mr. Friedman's
15 computer in Two Rivers?

16 A Me?

17 Q Yes?

18 A No.

19 Q Do you know whether anyone else has accessed
20 Mr. Friedman's computer since the TRO was entered?

21 A To the best of my knowledge, no.

22 Q Mr. Friedman's computer was stored in a locked office is
23 I think what I heard you say.

24 A Yes.

25 Q Was the computer on or off?

V. Papa - Cross/Mr. Schafhauser

1271

1 A I don't know.

2 Q Did you ever enter the office to see what was going on
3 with the computer?

4 A Did I ever enter his office to see what was going on with
5 the computer.

6 Q Yes?

7 A No.

8 Q Do you know whether anyone else entered Mr. Friedman's
9 office to access a computer at any time since the TRO was
10 entered?

11 A Yes.

12 Q Who?

13 A Well, the recent forensic company think accessed the
14 office. And Jay Nelkin accessed the office.

15 Q When did Mr. Nelkin access the office?

16 A I don't recall when.

17 Q Was it before or after the forensic team went to the
18 office?

19 A It was before.

20 Q About how long before?

21 A Maybe a month, I don't remember. I'm not guessing. I
22 don't remember.

23 Q And what do you know -- were you there when Mr. Nelkin
24 accessed the computer?

25 A He did not access the computer he accessed the office.

V. Papa - Cross/Mr. Schafhauser

1272

1 Q Okay.

2 A He was in the office. I was present with him in the
3 office.

4 Q You were present at all times when he was in the office?

5 A Yes.

6 Q What was he doing in the office of Mr. Friedman?

7 A Just looking just trying to see what was in there. Just
8 looking.

9 Q Did anyone turn on the computer?

10 A No.

11 Q Was the computer on?

12 A I didn't look at the computer so I can't answer that.

13 THE COURT: Anyone take any action with the computer
14 while you were in there?

15 THE WITNESS: Not in my presence. Absolutely not.

16 THE COURT: Next subject.

17 Q Did anyone take any materials from Mr. Friedman's office?

18 A No.

19 Q Okay. Could we move then to D-25 which is a smaller
20 binder, Mr. Papa?

21 A Okay.

22 Q You've interacted with Benzion Nussbaum.

23 You recognize this e-mail with Mr. Nussbaum dated
24 December 11, 2014?

25 A Do I recognize it?

V. Papa - Cross/Mr. Schafhauser

1273

1 Q Yes.

2 A It's a text message, so yes.

3 Q You see where it says, "Coffee dollar 12 x." Do you see
4 that?

5 A Yes.

6 Q Does that refresh your recollection that the password
7 that I showed you a moment ago in the e-mail dated
8 December 15, 2015, you had received on December 11, 2014, from
9 Mr. Nussbaum?

10 A Yes, it looks like I received this password, yes.

11 Q Okay. Now, could you please flip to the next, actually,
12 the third page. It looks like it's a text from you to him
13 saying did not work. Do you see that?

14 A Yes.

15 Q Okay. And you flip to the next page and it says now it
16 did.

17 Do you see that?

18 A Yes.

19 Q And the next page says he's asking you, "Did they get you
20 up and running?" Do you see that?

21 A Yes.

22 Q Okay. And your answer on the next page is yes. Do you
23 see that?

24 A Yes.

25 Q Does that refresh your recollection that in December 2014

V. Papa - Cross/Mr. Schafhauser

1274

1 you have the password and got up and running in Launch based
2 on that password?

3 A It doesn't really reflect -- refresh my recollection as
4 to what I got up and running, or what I was doing with this.
5 It doesn't -- it's not informative enough really to help me
6 understand what's going on here. I do recognize that I have
7 the password. What the password is to, I don't really
8 remember.

9 Q Very well.

10 A It's two years ago.

11 Q I understand it's two years ago. I don't remember what I
12 had for breakfast this morning. So let me move to a more
13 general question then.

14 Did you receive assistance from Mr. Nussbaum in accessing
15 Launch when you needed access to Launch?

16 A Yes.

17 Q You were asked on direct about books and records.

18 What books and records do you have available to you with
19 respect to Two Rivers Coffee?

20 A I have the invoicing that we did. I would have the
21 orders from customers perhaps. I have limited vendor invoices
22 or accounts payable. And I have the financial statements that
23 I produced from the QuickBooks system.

24 Q Putting aside the QuickBooks system information where are
25 the physical documents located?

V. Papa - Cross/Mr. Schafhauser

1275

1 A They're in a file room that doubles as our server room
2 and they're in two other offices.

3 Q Have you ever asked, putting aside Mr. Friedman, have you
4 asked Mr. Koenig or Mr. Papa -- I'm sorry, Mr. Koenig or
5 Mr. Eugene Schrieber or Mr. Steven Schrieber for books and
6 records that you believed you needed relating to the company?

7 A Yes.

8 Q When did you last do that?

9 A During the course of my employment as the need arose.

10 Q And do you recall when you last received books and
11 records from the Schriebers or Mr. Koenig?

12 A Well, I received information from Eugene Schrieber
13 frequently, so constantly, not constantly, but frequently.

14 Q Let me put before you a document it's Exhibit 11.
15 Defendant's Exhibit 11, Mr. Papa. And if you would take a
16 look at the -- it's Page 21 of Defendant's Exhibit 11?

17 A Okay.

18 Q On Page 21, there is a Paragraph 1 it says, "Plaintiff
19 has documents Bates-stamped SS000001 to SS12192." And then it
20 goes on, we can all read those words.

21 My question to you is simply: Have you ever had access
22 to those documents?

23 A I've never seen this. I don't know what this is
24 referring to.

25 Q You don't know what documents are encompassed by this;

V. Papa - Cross/Mr. Schafhauser

1276

1 correct?

2 A I have never seen this.

3 Q Okay. Do you know whether plaintiff has compiled
4 documents, 12,000-plus pages of documents, for purposes of
5 this case, or is this a first you're learning about this?

6 A This is a first I'm seeing this document. I don't know
7 what this is referring to.

8 Q Putting aside the document, did you know --

9 MR. SCHAFHAUSER: Well, withdrawn.

10 Q Putting aside the document, are you aware as to whether
11 plaintiff has, approximately, 12,000-plus documents that he
12 has identified as available. Were you aware of that before
13 today?

14 A No.

15 Q Have you ever seen those documents so far as you know?

16 A I don't know what they're referring to so I don't know.

17 Q Very well, I'll move on.

18 Now, are there file cabinets that possess hard copies of
19 Two Rivers documents that are maintained in South Plainfield?

20 A Yes.

21 Q Where are those file cabinets located within the
22 facility?

23 A They're in some in my office, some in you want the names
24 of employees.

25 Q Yes, please?

V. Papa - Cross/Mr. Schafhauser

1277

1 A Nicole Barge would have file cabinets and Sue Herzog
2 would have file cabinets.

3 Q Anyone else?

4 A There used to be filing cabinets in Sonya's office. I
5 don't remember offhand if they're 'till there. I don't think
6 they are. That's off the top of my head.

7 Q That's okay. We can only ask you what you remember
8 Mr. Papa.

9 Generally, can you describe to me what documents are in
10 your file cabinets with respect to Two Rivers's books and
11 records?

12 A I would have some of the legal contracts, the legal
13 bills. I try need to keep them generally filed. I would have
14 some of the tax returns, I'm sorry, there's also records in we
15 have a payroll administrator. There would be books and
16 records in her office as well.

17 Q Who is the payroll administrator?

18 A Lety Manriquez.

19 Q Thank you. Going back to your books and records?

20 A I would have try to have some he certificate of formation
21 that I obtained recently. I might have the tax authority
22 information with New Jersey. I would have corporate papers if
23 I can loosely describe them as that.

24 Q And how voluminous would you say these are?

25 A Not much. One file cabinet.

V. Papa - Cross/Mr. Schafhauser

1278

1 Q One file cabinet?

2 A I have financial statements that I produced. I have of
3 those pay stubs I alluded to earlier taking up space. I have
4 some of the prior copies of the credit card disbursement
5 receipts that I obtained. I have those. I might have
6 invoices for the fixed assets that was a big part of the
7 restatement for 2012. I would have the reviewed financial
8 statements independently prepared.

9 Q Anything else?

10 A No.

11 Q All right. You mentioned Nicole Barge. What books and
12 records are in her possession, custody, and control?

13 A Either accounts receivable related, or some accounts
14 payable. Customer or vendor.

15 Q And how voluminous are those documents?

16 A Two lateral file cabinets.

17 Q Anything else that you know about with respect to
18 Ms. Barge's books and records or, rather, the books and
19 records in her possession?

20 A Anything else? No.

21 Q All right. Ms. Herzog, you mentioned Sue Herzog, what
22 books and records are in custody and possession?

23 A She would have some accounts payable as well and she
24 would have some accounts receivable and invoicing.

25 Q And how volume up knows are those documents?

V. Papa - Cross/Mr. Schafhauser

1279

1 A She has four file cabinets, I believe. Two lateral and
2 two vertical.

3 Q And then you mentioned Ms. I think it's Lety Marquez?

4 A Manriquez.

5 Q I can't read my own writing. And I think you said was
6 she has payroll records, yes?

7 A Yes.

8 Q What kind of payroll records does she have.

9 A She has payroll reports produced from Paychex starting in
10 2016.

11 Q Now, when you -- whatever it was that you got the
12 password for Launch which we went through a moment ago. When
13 you accessed Launch did you take any steps to download the
14 information or record the information in any way?

15 A Did I download? Definitely not. And there was nothing
16 new to record at that time. And I wasn't using that system
17 going forward. So, no, there was nothing new to record.

18 Q So there was no reason to record anything from a Launch
19 at that point when you got access?

20 A There was a reason to retrain, we seem to be repeating
21 ourselves. The goal is to retrain historical records. That's
22 what's missing. I don't use Launch to generate new
23 information.

24 Q So if I can ask this question, Mr. Papa.

25 Other than the retention issue, the company hasn't been

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1 unable to function in any way because of the loss of Launch;
2 correct?

3 A Well, again, I had a problem with the NLRB case that I
4 could not easily generate that information. And we're in
5 violation of state laws requiring us to retain information
6 that's like, "Other than the play, Mrs. Lincoln, how did you
7 like the play?"

8 We're in violation of law, we don't have adequate
9 records to support the financial statements I produced that I
10 reviewed and the basis of the tax returns.

11 Q Has it come to your attention, by the way, that an effort
12 was made to reinstitute Launch? Were you aware of that?

13 A Not really, no.

14 Q No. Did anyone provide you with instructions to try to
15 access Launch?

16 A No.

17 Q Within the last week?

18 A No.

19 Q This is the first you're hearing about this?

20 A I heard a discussion about providing access or overheard
21 comments. Nobody spoke to me specifically about accessing
22 Launch.

23 Q What did you overhear? What comments did you overhear
24 about the issue?

25 A That there was some discussion about providing us access

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1 to Launch.

2 Q But no one forwarded to you any instructions that could
3 be used to access Launch?

4 A Correct.

5 Q Now, I just want to be clear. Could you please turn to
6 Exhibit 33.

7 A In defendant's?

8 Q Yes, Defendant's Exhibit 33.

9 THE COURT: I'm sorry, Defendant's 33.

10 MR. SCHAFHAUSER: Your Honor, I think you got the
11 small book here in front of you.

12 Q Have you seen this e-mail from me to Mr. Parness dated
13 July 29, 2016, before now?

14 A No.

15 Q Let me --

16 MR. SCHAFHAUSER: Your Honor, I see it's
17 5:00 o'clock.

18 THE COURT: Why don't we suspend. There's a matter
19 I'd like to discuss with you before we break for the day.

20 MR. SCHAFHAUSER: Yes, of course.

21 THE COURT: So you can stay or go as you like.

22 On this, what's the status? Maybe Mr. Nelkin or
23 Ms. Nelkin, to what extent have the instructions that were in
24 the July 29th e-mail been attempted?

25 MR. NELKIN: I forwarded that exact e-mail to Stroz.

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1 THE COURT: Stroz has tried this without success.

2 MR. NELKIN: I asked them to do it just to test it
3 if it worked for Vince.

4 THE COURT: And earlier in the week, I asked all of
5 you to arrange for Stroz and Mr. Nussbaum, whoever needs to be
6 in the room together, to sit down and do it.

7 MR. NELKIN: We discussed it today, your Honor.

8 THE COURT: Tonight, please. Tonight. Let me know
9 in the morning.

10 Anything else before we break.

11 MR. GRANTZ: Mr. Goldberg came here today to address
12 that issue, that's what he was trying to tell you. He came up
13 here and said, I'm trying to facilitate that with Ben. So he
14 left. But that's what he was trying to express.

15 THE COURT: Mr. Nussbaum is not a party to this, you
16 folks are getting it done tonight, please.

17 MR. SCHAFHAUSER: Yes, Your Honor.

18 THE COURT: Have a good night, everybody.

19 MR. NELKIN: Thank you.

20 MR. SCHAFHAUSER: Thank you.

21 (Witness leaves the witness stand.)

22 (WHEREUPON, this matter was adjourned to August 4,
23 2016, at 9:30 a.m.)

24

25

* * *

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WITNESS

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